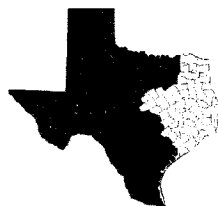


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CERTIFIED MAIL RRR # 7020 1810 0000 5247 0089

Garry Sweeney, Regional Director
U.S. Dept. of Housing and Urban Development
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Department of Homeland Security
Office for Civil Rights and Civil Liberties
JAN 19 2022
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VIA FIRST CLASS MAIL

CERTIFIED MAIL RRR # 7020 1810 0000 5247 0102

Office for Civil Rights and Civil Liberties
U.S. Department of Homeland Security
Building 410, Mail Stop #0190
Washington, D.C. 20528

VIA FIRST CLASS MAIL

CERTIFIED MAIL RRR # 7020 1810 0000 5247 0119

Office for Civil Rights
U.S. Department of Commerce
1401 Constitution Ave NW
Washington, DC 20230

VIA FIRST CLASS MAIL

CERTIFIED MAIL RRR # 7020 1810 0000 5247 0096

US Environmental Protection Agency
Office of Civil Rights (1201A)
1200 Pennsylvania Ave NW
Washington, DC 20460

Re: Complaint under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d by Super Neighborhood 48 "Trinity / Houston Gardens" regarding the City of Houston, Texas

Serving the East Region of Texas since 1948

Angleton, Beaumont, Belton, Bryan, Conroe, Galveston, Houston, Longview, Nacogdoches, Paris, Texarkana, Tyler, Waco

Dear Sirs:

On behalf of certain and former residents of Super Neighborhood 48 "Trinity / Houston Gardens" commonly known as the area in Houston comprised of Trinity Gardens and Houston Gardens ("Complainant", "Super Neighborhood 48", or "SN48"), the undersigned advocates at Lone Star Legal Aid submit this Complaint regarding the City of Houston ("City") for the intentional and discriminatory disregard of Super Neighborhood 48 resulting in disparate treatment of the community. The City has: (1) denied the neighborhoods in SN48 necessary City services needed to improve the overall quality of life and nature of the community; (2) devalued the homes and the entire community through its failure to provide adequate drainage infrastructure, concentration of industrial activities and waste sites, and absence of code enforcement contributing to neighborhood blight and industrial overtaking; and (3) deprived the residents of SN48 of key features, amenities, and institutions needed to sustain and revitalize the area.

Title VI prohibits entities receiving federal financial assistance from engaging in activities that subject individuals to discrimination on the basis of race, color or national origin. Title VI of the Civil Rights Act of 1964 42 U.S.C. § 2000d et seq. The City of Houston receives financial assistance from the U.S. Department of Homeland Security (DHS), U.S. Department of Housing and Urban Development (HUD), U.S. Department of Commerce (DOC), U.S. Environmental Protection Agency (EPA) or other federal agencies (collectively, the "Governmental Agencies"). These entities are, therefore, subject to Title VI's prohibition against discrimination. The City violates this prohibition by excluding the neighborhoods in SN48 from receiving City services on the basis of race and color.

As an initial step in addressing the violations set forth in this complaint, Complainant requests one or more of the Governmental Agencies identified in this complaint, including, HUD, DHS, DOC, and EPA, accept this Complaint, and investigate whether the City has violated, and/or continues to violate Title VI of the Civil Rights Act and its implementing regulations in its continued intentional discrimination towards the Trinity / Houston Gardens community.¹ In order to remedy the violations set forth in detail below, Complainant further requests:

- (1) A directive requiring specific performance by the City of Houston to create and enforce truck yard, junk yard and illegal dumping programs to combat the high concentration of trash and hazardous material dumped into the Trinity / Houston Gardens Neighborhood. Put another way, the City cannot rely solely on reporting through 311 to address these identified, persistent problems;
- (2) A directive requiring the City of Houston to invest at least \$200 Million in Capital Improvement Project funds over the next 10 years into Trinity / Houston Gardens to improve existing flooding and outdated infrastructure in the area that increase neighborhood safety and accessibility such as sidewalk installation, culvert replacement and ditch cleaning;

¹ Super Neighborhood 48 also specifically requests that if any of the named Governmental Agencies reject this complaint, another named Governmental Agency investigate alone or jointly with other federal agencies, as appropriate, in accordance with federal regulations. See 28 C.F.R. 42.408(b) ("Where a federal agency lacks jurisdiction over a complaint, the agency shall, whenever possible, refer the complaint to another federal agency...").

- (3) A directive requiring the City of Houston to invest \$3 million of the Park Capital Improvement Fund into the Trinity / Houston Gardens area for improvements to Apache, Pelham, Trinity Gardens and Rosewood Park to be completed within 5 years to provide access to recreational opportunities, increase property values, combat crime, and provide safe green spaces for environmental impacts (estimated at \$200,000/ park in improvements for smaller parks with larger improvements to Trinity Gardens Park);
- (4) A directive requiring the City of Houston invest \$500 million over five years of the Community Development Block Grant funds into Trinity / Houston Gardens to support economic development projects such as the establishment of a small market/grocery store to combat the existing food desert; build senior housing, create jobs, incentivize a day-care facility, and develop programs for first-time homebuyers' assistance and a housing repair and improvements to ameliorate neighborhood blight and redress the years of disinvestment; and
- (5) A directive requiring the City to increase City services and employees such as the police department, solid waste officials, code enforcement, and animal control within the Super Neighborhood 48 boundaries. The City should have to document these increased hours in monthly reports that track staff time and resources expended in addressing issues identified in this complaint.

I. PARTIES

A. COMPLAINANT – SUPER NEIGHBORHOOD 48 “TRINITY / HOUSTON GARDENS”

The complainant is Super Neighborhood 48 “Trinity / Houston Gardens” which takes its name from two communities: Trinity Gardens and Houston Gardens in Houston, Texas, also known as the “Gardens.” Within the City of Houston, a super neighborhood is a geographically designated area where residents, civic organizations, institutions and businesses work together to identify, plan, and set priorities to address the needs and concerns of their community.² The boundaries of each super neighborhood rely on major physical features, such as bayous or freeways, to group together contiguous communities that share common physical characteristics, identity or infrastructure.³ The City of Houston defines the area known as Super Neighborhood 48 by the geographic boundary shown below in Figure 1, which is within City Council District B and comprises 4,395 acres (6.87 sq. miles) in the Northeastern part of the City of Houston, Texas:

² <https://www.houstontx.gov/superneighborhoods/>

³ *Id.*

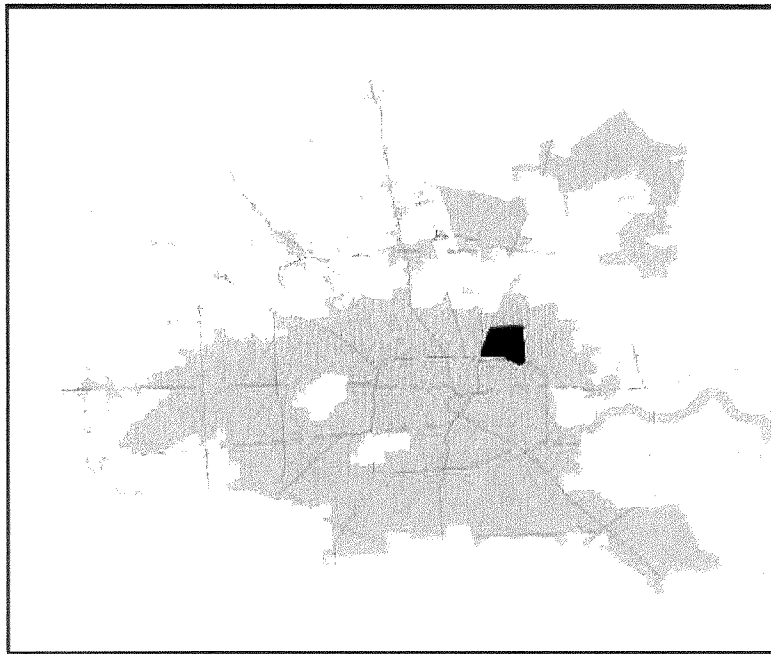


Figure 1: Relative Location of SN48 in Northeast Houston, Harris County, Texas

In Houston, each super neighborhood elects a council comprised of area residents and stakeholders that serves as a forum to discuss issues and identify and implement priority projects for the area. Super Neighborhood 48 is comprised of leaders and community activists who have continually battled with the City to improve the existing living conditions of their community. Many of these residents were born and raised in the Gardens community and have lived in the Gardens their entire life, showing their commitment to investment in their community. These residents are property owners with both personal and financial interest at stake as a result of the continuous disinvestment in their community. The Complainant represents a community predominately of African American heritage. The group is comprised of parents, grandparents, community members, retirees, church leaders, community organizations, and the like. Deeply rooted in their neighborhood, these residents are committed to improving the quality of life of their community, despite the City's unwavering attempts to disregard and devalue it.

Originally developed as communities just outside the city, each subdivision in the Gardens area initially had oversized single-family home sites, allowing residents to have their own gardens. Now home types vary widely, although most are single family and generally affordable. For this reason, density in Super Neighborhood 48 remains low, with approximately 2,301 persons per sq. mile, compared to the rest of Houston, which has approximately 3,314 persons per sq. mile.⁴ Railroad tracks trisect the neighborhood and are a dominant feature. Some of the inexpensive land has been converted to industrial uses, especially on the community's eastern edge. As the land use map of SN48 shows below, there are no major concentrations of retail development within the area.

⁴ https://www.houstontx.gov/planning/Demographics/docs_pdfs/SN/48_Trinity_HoustonGardens.pdf

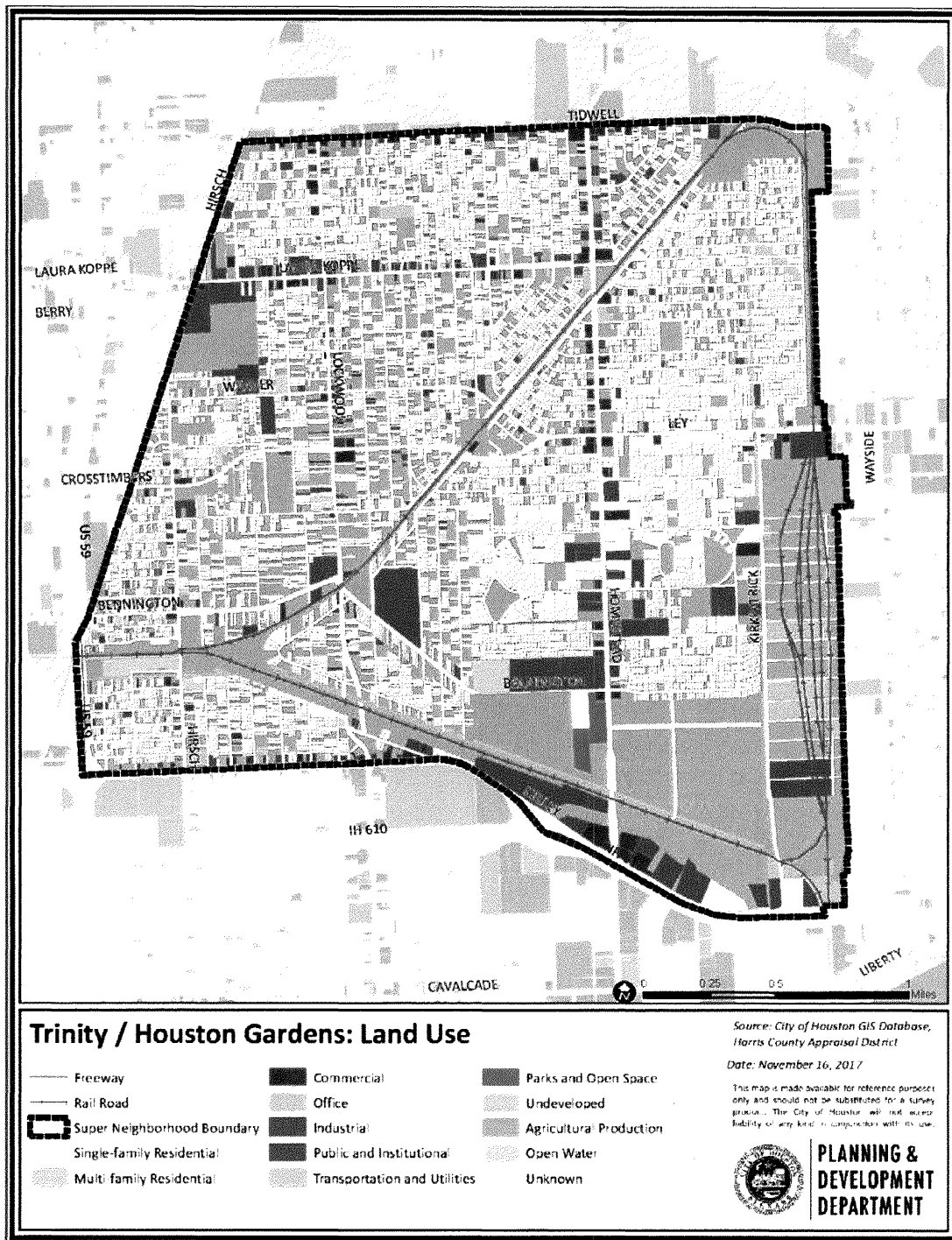


Figure 2: Land Use in SN48 as of November 2017

EJ Screen data reveals that the area designated as SN48 within the City of Houston is overwhelmingly minority when compared to national percentiles as shown in Figure 3 below:

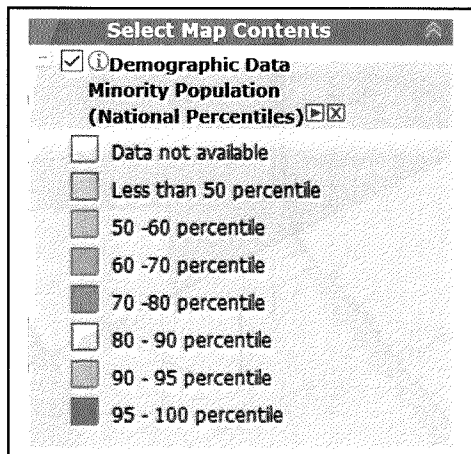
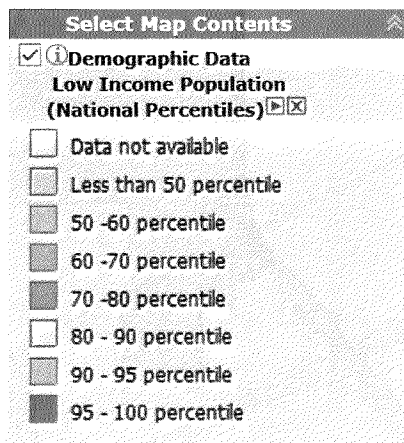


Figure 3: Minority Population of Super Neighborhood 48

Further, the same area is predominately low income when compared to national population as shown in Figure 4 below:

Figure 4: Low Income Population of Super Neighborhood 48



In 2019, UT Southwestern Medical Center recently published a report that shows that the life expectancy in Harris County varies by ZIP code.⁵ The report confirms that life expectancy correlates to poverty levels in a neighborhood. In ZIP codes across the state with very low poverty — less than five percent of their population live in poverty — the mean life expectancy was 82.4 years.⁶ However, in ZIP codes where over 20 percent of the population lives in poverty, the average life expectancy was just 76.4.⁷ These trends hold true when comparing the average life expectancy in ZIP codes in Northeast Houston / Harris County where the Gardens is located with averages for Harris County, the State and the nation. Average life expectancy in Texas is 78.5 years. Nationally, it's 78.8 years. In Harris County, the average life expectancy is 78.9 years. However, for the three ZIP codes where the Gardens is situated — all of which exceed poverty levels of 25%— the average life expectancy by ZIP code is as follows:⁸

Table 1: Life Expectancy in the Gardens Compared to Averages

ZIP Code	Average Life Expectancy in the Gardens	Compared to Harris County Avg	Compared to State Avg	Compared to National Avg	Individuals Below Poverty Level⁹
77016	70.2 years	-8.7 years	-8.3 years	-8.6 years	26.1%
77028	71.0 years	-7.9 years	-7.4 years	-7.8 years	28.0%
77026	69.8 years	-9.1 years	-8.7 years	-9 years	38.8%

It almost goes without saying, but these values are disproportionately worse than whiter, more affluent ZIP codes in Houston. Where you live in Houston determines how long you live here. This narrative should not hold true for the fourth largest City in the United States, a first world nation.

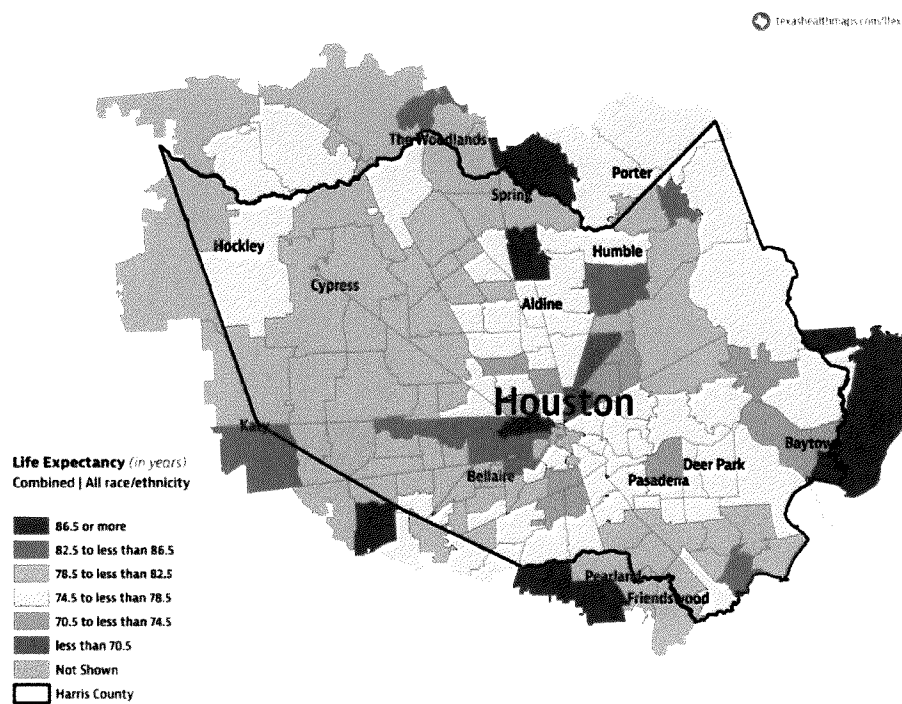
⁵ Katie Watkins, Life Expectancy In Houston Can Vary Up To 20 Years Depending On Where You Live, Houston Public Media, March 19, 2019, accessed at: <https://www.houstonpublicmedia.org/articles/news/harris-county/2019/03/04/323859/life-expectancy-in-houston-can-vary-up-to-20-years-depending-on-where-you-live/>

⁶ <https://www.utsouthwestern.edu/newsroom/articles/year-2019/life-expectancy-texas-zipcode.html>

⁷ <https://www.utsouthwestern.edu/newsroom/articles/year-2019/life-expectancy-texas-zipcode.html>

⁸ UT Southwestern Medical Center's Zip Code Map can be found here: <https://www.texashealthmaps.com/lifex>

⁹ American Community Survey 5-Year Estimates, 2013-2017.



Courtesy of UT Southwestern Medical Center

Figure 5: Visualization of Life Expectancy by ZIP Code in Harris County;
SN48 ZIP Codes indicated in Red and Orange based on Data in Table 1

B. RECIPIENT – THE CITY OF HOUSTON, TEXAS

The City of Houston, Texas was founded on August 30, 1836, by Augustus Chapman Allen and John Kirby Allen, brothers who paid just \$1.40 per acre for 6,642 acres of land.¹⁰ The City was formed shortly after the Texas War for Independence and was named after the hero of the war, General Sam Houston.¹¹ In 1837, the City of Houston was incorporated and elected its first mayor.¹² In 1839, two aldermen were elected from each of the then four wards.¹³ The City required aldermen to be White males, citizens of Texas, who had resided in Texas for at least 6 months with more than \$100 in real estate for three months.¹⁴

The 1850 census assessed only 2,397 Houstonians making Galveston the state's largest city at the time.¹⁵ Less than 100 years later in 1930, Houston would grow to a population of 292,352 people, making Harris County the most populous in the state.¹⁶ Today, Houston is still the largest city in Texas and in the southern portion of the United States with an estimated population of 2.3 million in 2017, making it the

¹⁰ <https://www.houstontx.gov/controller/cafr/cafr2007.pdf>.

¹¹ About Houston, <https://www.houstontx.gov/about/houston/cityhallhistory.html>.

¹² <http://www.houstonculture.org/resources/houstontime.html>.

¹³ *Id.*

¹⁴ Betty Trapp Chapman, *A System of Government Where Business Ruled*, 5 WHEN THERE WHERE WARDS 29–33 (2010), <https://houstonhistorymagazine.org/wp-content/uploads/2015/09/ward-system-of-government.pdf>.

¹⁵ Houston, Texas, United States History, <https://www.u-s-history.com/pages/h2089.html>.

¹⁶ <http://www.houstonculture.org/resources/houstontime.html>.

fourth most populous city in the nation.¹⁷ The City is approximately 7% Asian, 23% African American, 25% White and 44% Hispanic or Latino, with approximately 10% of the population being elderly.¹⁸

The City operates under a mayor-council form of municipal government. There is one elected Mayor, one City Controller and 16 members of City Council, elected every four years.¹⁹ City Council members are limited to serving two terms with each term beginning January 2nd.²⁰ Five Council Members are elected At-Large, or city-wide, while the other eleven are elected to geographic districts of roughly the same proportion of the population.²¹ Houston's City Council was comprised of only White members until 1972.²² Super Neighborhood 48 is in City Council District B.

The City Council functions as the City's legislative body with the power to enact and enforce all of the City's ordinances and resolutions.²³ The Mayor is responsible for the general management of the City and for ensuring that all laws and ordinances are enforced.²⁴ The City of Houston is also a taxing authority and receives a majority of its revenue from local property taxes, sales taxes, franchise fees, and charges for services, amongst other revenue sources. The City of Houston is a recipient of both state and federal funds as further detailed below. Over the past decade, the City has applied for more than \$1 billion dollars in federal funding from a variety of federal agencies.

Despite being the fourth most populous city in America, the City of Houston is the only major American city that has no zoning regulations.²⁵ Thus, no regulations separating residential, commercial and industrial developments exist to protect residents from undesirable and incompatible land uses in their area. This circumstance, in turn, has subjected predominately minority communities in what should be residential neighborhoods to unprecedented amounts of environmental, health and safety hazards at the hands of the industrial and commercial industries. Moreover, through the inequitable distribution of funds, little economic development in areas with the highest concentrations of poverty, and arbitrary selection of infrastructure projects, the City seemingly has established a system that dictates investment and disinvestment on the basis of race.

It is the responsibility of the Mayor to advise the City Council about the City of Houston's financial condition and to present to the Council an annual budget for approval.²⁶ The annual budget accounts for the City's expected revenue and expenditures during that fiscal year. The annual budget is comprised of the General Fund (core government services), Enterprise Fund (airports, water and sewer system, entertainment and convention centers), Special Revenue Fund (specific projects), Internal Services Fund (goods and services exchanged between departments on a reimbursement basis), and Service Charge Back

¹⁷ <https://www.visithoustontexas.com/about-houston/facts-and-figures/>.

¹⁸ Demographics, City of Houston,

https://www.houstontx.gov/planning/Demographics/Infographics/HWC_Demographics.html.

¹⁹ City Council, <https://www.houstontx.gov/council/>.

²⁰ *Id.*

²¹ *Id.*

²² John Gaventa et al., *Communities in Economic Crisis: Appalachia and the South*, 196, (1990).

²³ City Council, <https://www.houstontx.gov/council/>.

²⁴ <https://www.houstontx.gov/mayor/>.

²⁵ Robert Doyle Bullard & Beverly Wright, *The Wrong Complexion for Protection: How the Government Response to Disaster Endangers African American Communities*, 13, (2012).

²⁶ Mayor's Office, City of Houston, <https://www.houstontx.gov/mayor/>.

fund (revolving funds).²⁷ The annual budget does not include budgets for Capital Improvement Projects or Tax Reinvestment Zones, which are separately funded programs by the City.

Capital Improvement Projects (“CIP”) are infrastructure projects selected by the City to take place over the span of five years. The City prioritizes projects like improvements to library facilities, stormwater drainage, park, and recreational facilities and the like, based on needs and funding availability. The mayor presents a budget for the proposed Capital Improvement Projects to City Council annually on which they vote to carry forth or oppose the project. Capital Improvement Projects have played a huge role in the continuing heightened economic development of whiter, more affluent neighborhoods in the inner City of Houston. This current process has also played a huge role in leaving communities of color routinely marginalized, such as the situation facing Trinity / Houston Gardens, a minority majority neighborhood which has been left behind without any updated infrastructure and therefore at a greater risk than before after a natural disaster.

Rebuild Houston, a dedicated pay-as-you-go fund for drainage and streets, was passed by Houston voters in November 2010, with the purpose of enhancing, improving and continuing renewal of Houston’s drainage and streets.²⁸ However, the actual number of CIP Projects from 2010 to 2015 in areas of Houston, like the Gardens, that have 85% or more Minority Groups is only 27%. According to the City’s website, ReBuild Houston has a new name and renewed purpose. Now called “Build Houston Forward”, the program still touts its dedication to improving drainage systems and streets all across the city. Following Harvey, the City stated its commitment to build forward, not build back the same way. However, the inequities under this new system, despite changes in how the City funds its street and drainage construction, maintenance, and improvements, have not made noticeable differences in the Gardens. Currently, there are only three current projects identified in the Trinity / Houston Gardens area:²⁹

Table 2: Build Houston Forward Repair Projects Listed for January 2021-December 2021

Name of Project	Estimated Construction Cost	Project Description	Project Limits	Est. Project Timeline
Laura Koppe Paving and Drainage	\$21,089,241	Design and construction for concrete paving with storm drainage, curbs, sidewalks, driveways, street lighting, and necessary underground utilities.	Hirsch to Homestead	Spring 2021 (complete construction - delayed)
Hirsch Paving and Drainage	\$12,875,234	Design and construction for concrete paving with storm drainage, curbs, sidewalks, driveways,	Laura Koppe to Crosstimbers	Summer 2023 (start of construction)

²⁷ Budget Boot Camp, City of Houston, <https://www.houstontx.gov/finance/budgetbootcamp.html>.

²⁸ <https://www.rebuildhouston.org/proposition-1-charter-amendment.n>

²⁹ See Repair Projects for Trinity / Houston Gardens, available at <https://buildhoustonforward.org/src/project.html>

Table 2: Build Houston Forward Repair Projects Listed for January 2021-December 2021

Name of Project	Estimated Construction Cost	Project Description	Project Limits	Est. Project Timeline
		street lighting, and necessary underground utilities.		
Bonita Gardens Area Roadside Ditch Improvements	\$12,202,327 (funded by third party)	Design and construction of roadside ditch drainage improvements to restore system capacity and performance.	Districts H and B	Summer 2020 (estimated start of construction)

City Council designated special zones known as Tax Reinvestment Zones (“TIRZ”) that allow the taxes from new improvements within that area to be set aside in a fund to finance public improvements within the zone. The purpose of the program is to “help finance costs of redevelopment and promote growth in areas that would otherwise not attract sufficient market development in a timely manner.”³⁰ To qualify for a TIRZ designation an area must:

Substantially arrest or impair the sound growth of the municipality or county creating the zone, retard the provision of housing accommodations, or constitute an economic or social liability and be a menace to the public health, safety, morals, or welfare in its present condition and use because of the presence of:

- a substantial number of substandard, slum, deteriorated, or deteriorating structures;
- the predominance of defective or inadequate sidewalk or street layout;
- faulty lot layout in relation to size, adequacy, accessibility, or usefulness;
- unsanitary or unsafe conditions;
- the deterioration of site or other improvements;
- tax or special assessment delinquency exceeding the fair value of the land;
- defective or unusual conditions of title;
- conditions that endanger life or property by fire or other cause; or
- structures, other than single-family residential structures, less than 10 percent of the square footage of which has been used for commercial, industrial, or residential purposes during the preceding 12 years, if the municipality has a population of 100,000 or more.

TEX. TAX CODE § 311.005.

³⁰ TIRZ, City of Houston, <https://www.houstontx.gov/ecodev/tirz.html>.

Despite its blighted appearance due to deteriorated structures and unsafe conditions due to various environmental hazards and infrastructure inadequacies, the Trinity / Houston Gardens area was not included among the 27 zones designated by the City for reinvestment in 2018 as a TIRZ. It appears that the City will just continue to ignore this struggling community. Instead of responding to neighborhood blight with reinvestment, the City has apparently used the neighborhood's current conditions as a justification for continued disinvestment and neglect. This neighborhood has become where the one where the City can put less desirable things that more affluent communities would complain of sited in their backyard. One City inspector actually told a community leader: "Look at this area: what do you want me to do?" From the community's perspective, the City has become the neighborhood's worst enemy because the City has "no motivation to fix the problem," "no commonsense approach to address the community's needs," and "no meaningful involvement of the community in how to fix these problems."

II. JURISDICTION

Title VI's prohibition on discrimination applies to all recipients of federal funds. "No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d *et seq.*

A. PROGRAM OR ACTIVITY

Title VI defines a "program" or "activity" as "all of the operations of ... a department, agency, special purpose district, or other instrumentality of a State or of a local government ... any part of which is extended Federal financial assistance." 42 U.S.C. § 2000d-4a. Accordingly, if any part of a listed entity receives federal funds, all of the operations of that entity are covered by Title VI. The actions of each of the recipients named in this complaint qualify as a part of a program or activity of a State or of a local government. The actions of the City are part of a program or activity because the City is a local government entity. 42 U.S.C. § 2000d-4a (1)(A)(B).

B. FEDERAL FINANCING/FEDERAL FINANCIAL ASSISTANCE

The City of Houston is a recipient of Federal financial assistance. The City is a direct recipient of federal funding from HUD, DHS and the DOC. The City receives federal financial assistance as defined in, HUD's, DHS's, DOCs, and EPA's Title VI implementing regulations.

1. HUD Funds Received by the City of Houston

HUD regulations define "recipient" as "any State, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity ..." 24 C.F.R. § 1.2.

The City regularly receives federal funding from HUD through numerous programs, including Community Development Block Grants/Entitlement Grants, Emergency Solutions Grants (Homeless Assistance Grants), and the Home Investment Partnership Program.

The following is a list of HUD funds received by the City of Houston from FY 2010 to FY 2018:³¹

2010 - \$103,029,213
2011 - \$90,217,905
2012 - \$81,893,653
2013 - \$1,431,658
2014 - \$49,879,293
2015 - \$72,610,675
2016 - \$110,079,819
2017 - \$85,422,588
2018 - \$119,121,486
2019 - \$120,806,504

2. DHS Funds Received by the City of Houston

The City receives federal financial assistance as defined in DHS's Title VI implementing regulations. DHS regulations define "[r]ecipient" as "any State... or any political subdivision thereof, or instrumentality thereof, any public or private agency, institution, or organization, or other entity, or any individual, in any State ... to whom Federal financial assistance is extended, directly or through another recipient... ." 6 C.F.R. § 21.5 (2003).

The City regularly receives significant grants from DHS as part of the Federal Emergency Management Program for hazard mitigation, regional catastrophic preparedness and disaster grants to provide public assistance. The following is a list of DHS funds received by the City from FY 2010 to FY 2019:³²

2010 - \$21,956,304
2011 - \$20,426,496
2012 - \$42,755,679
2013 - \$37,714,633
2014 - \$31,942,067
2015 - \$21,158,640
2016 - \$18,633,234
2017 - \$15,607,917
2018 - \$8,059,072
2019 - \$5,681,634

3. DOC Funds Received by the City of Houston

DOC's regulations define "recipient" as "any governmental, public or private agency, institution, organization, or other entity, or any individual, who or which is an applicant for Federal financial assistance, or to whom Federal financial assistance is extended directly or through another recipient." 15 C.F.R. § 8.3 (2003).

³¹ Single Audit Reports, City of Houston Finance Department, https://www.houstontx.gov/finance/single_audit.html.

³² *Id.*

The City of Houston currently receives grants from DOC through programs for Economic Development Support for Planning Organizations and Broadband Technology Opportunities Programs. The following is a list of DOC funds received by the City from FY 2010 to FY 2019:³³

2010 - \$7,167,384
2011 - Not Applicable
2012 - \$1,365,586
2013 - \$2,073,524
2014 - \$353,697
2015 - \$2,462
2016 - Not Applicable
2017 - Not Applicable
2018 - Not Applicable
2019 - \$402

4. EPA Funds Received by the City of Houston

The City receives federal financial assistance as defined in EPA's Title VI implementing regulations. EPA regulations define "[r]ecipient as "any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance. 40 C.F.R. § 7.25 (2010).

The City regularly receives significant grants from the EPA for programs for Brownfields Assessment and Cleanup Cooperative Agreements, Flood Mitigation Assistance, Air Pollution Prevention and studies, research, investigations, and activities relating to the Clean Air Act, Chemical Safety and Pollution Prevention. The following is a list of EPA funds received by the City from FY 2010 to FY 2019:

³⁴

2010 - \$419,906,161
2011 - \$4,438,422
2012 - \$10,014,724
2013 - \$435,910,449
2014 - \$55,454,776
2015 - \$46,456,382
2016 - \$83,124,132
2017 - \$56,511,674
2018 - \$37,508,879
2019 - \$30,334.406

³³ *Id.*

³⁴ *Id.*

C. TIMELINESS

This complaint is timely because it is based on the City's ongoing actions that prejudice and discriminate against Super Neighborhood 48 in the provision of City services on a daily basis. DOC, DHS, HUD, and EPA regulations all specify that a complaint must be filed within 180 days of the alleged discriminatory act. 6 C.F.R. § 21.11(b) (2003) (DHS), 24 C.F.R. § 1.7(b) (1973) (HUD); 40 C.F.R. § 7.120(b) (2010) (EPA); 15 C.F.R. § 8.8(a) (1973) (DOC). DOC, DHS, HUD, and EPA each have the authority and discretion to extend or waive the deadline. *Id.*

In 2016, residents of Super Neighborhood 48 began making 311 calls to the City of Houston in response to the conditions in their community such as the illegal dumping of tires and junk vehicles. Residents would drive around their neighborhood and take notes of all the locations where tires, mattresses, tree waste, and other trash was dumped and reports these issues to 311. This regular reporting became the resident's methodology at the recommendation of their own city councilman Jerry Davis, who informed them that the reason nothing was being resolved in their neighborhood was that they were not making enough 311 requests to the city.

Despite this suggestion and the increase in the volume of calls from Gardens residents, the Gardens community did not see much change in the City's response. It often takes several weeks for the city to respond to their complaints, which leads to residents calling the City to check the status of their requests prior to an initial response from the City. As evidenced further in the complaint, the City's timely resolution to the reported issues takes nearly twice as long in the Gardens as it does in more affluent White neighborhoods. Moreover, some 311 requests have sparked retaliatory acts towards residents, forming the basis of this complaint.

In late 2016, the Ex. (6), 7(C) made a complaint to the city about a missed trash pick-up. After Ex. (6), 7 made this complaint, the City came out and "red-tagged" every house on the block, Ex. (6), 7(C). The city issued citations to every house for extremely minor violations, such as having the trash can outside the gate. This retaliation is just one instance of the ongoing, intentional discriminatory actions taken towards residents.

This history of neglecting 311 requests from Super Neighborhood 48 has been pervasive for many years, negatively affecting the community's ability to address community concerns. For several years, the City relied on a SeeClickFix application to expand reporting of 311 complaints to the City. Community members were able to make reports to the City through this application; however, there was no accountability with the City in following up with complaints made through the application because the tracking numbers issued by the application for a "service request" did not match the "reference numbers" assigned by the City to address the complaint. Often times the application would inform the person making the report that the request had been "closed" without any action by the City. This system led to frustrations to those reporting issues to the City as they had no way to follow up on these requests and were left with the impression that their reporting had no effect.

More recently, on June 26, 2021, the City of Houston rolled out a new Service Request System for 311 complaints called the Customer Requests and Information System (CRIS). The City's new cloud-based 311 application purportedly "provides a self-service-based platform to report complaints to 311." This new system, which was meant to address many of the issues created by the SeeClickFix system, however, is not user friendly. Community members in Super Neighborhood 48 and its leadership are struggling with the new system, which has

become very difficult for them to navigate and keep up with a record of their complaints in order to follow up with the City. Specifically, CRIS deleted all prior reports to 311 so there is no history of their years of prior complaints. This recent action by the City only further highlights the disparities in the City's provision of services to low-income communities that do not have access to the technology or the ability to communicate with the City on these various platforms. Further, when complaints are made, there is no accountability by the City under this new system to ensure it addresses the complaint made. The community fears that the data on disparities in addressing 311 complaints, collected for the last several years and highlighted in this complaint, will only continue to get worse under this new system.

This complaint is timely because it has been filed within 180-days of the City's launching of the new CRIS system for reporting 311 complaints. Further, the violations alleged in this complaint are part of a sustained, ongoing campaign of intentional discriminatory actions and because these actions are highly likely to continue into the future, we request that HUD, DHS, DOC, and EPA extend the 180-day deadline if warranted. *See* 24 C.F.R. § 1.7(b) (1973) (applicable to HUD); 6 C.F.R. § 21.11(b) (2003) (applicable to DHS); 15 C.F.R. § 8.8(a) (1973) (applicable to DOC); 40 C.F.R. § 7.120(b)(2) (2010) (applicable to EPA).

D. OTHER PRUDENTIAL FACTORS AND/OR JURISDICTIONAL CONSIDERATIONS

This Complaint satisfies all other jurisdictional and prudential considerations laid out in HUD, DHS, EPA and DOC regulations implementing Title VI. Specifically, this Complaint is submitted to each agency in writing, by and on behalf of a Complainant group that is authorized to submit such complaint to redress the adverse impacts these Complainant experiences directly as a result of the City's violations of Title VI and which other Houston residents do not experience.

HUD, DHS, EPA, and DOC have subject matter jurisdiction over this Complaint because it alleges discrimination based on race in violation of Title VI of the Civil Rights Act of 1964. This Complaint also contains unique civil rights allegations that have not been alleged in any court or administrative proceeding, and which are specific to the City's pattern of discrimination in its placement of industrial facilities, inadequate infrastructure and lack of City services in the Gardens community.

Moreover, this Complainant seeks unique relief from HUD, DHS, EPA, and DOC – compliance with Title VI. Complainant asks HUD, DHS, EPA, and DOC to investigate this Complaint and take steps to remedy noncompliance with Title VI by the City, including conditioning any and all future federal funding on strict compliance. This relief is not available through other means.

III. FACTUAL BACKGROUND

A. THE RESIDENTS AND COMMUNITY OF TRINITY AND HOUSTON GARDENS

1. Trinity and Houston Gardens History and Demographics

The "Gardens" neighborhood comprised of both Trinity Gardens and Houston Gardens is a closely knit community located on the outskirts of downtown in Northeast Houston along Hunting Bayou. The combined neighborhood boundaries are approximately 1-69 to the west, Tidwell Road to the north, Wayside Road to the east, and IH-610 and Kelley Road to the south.

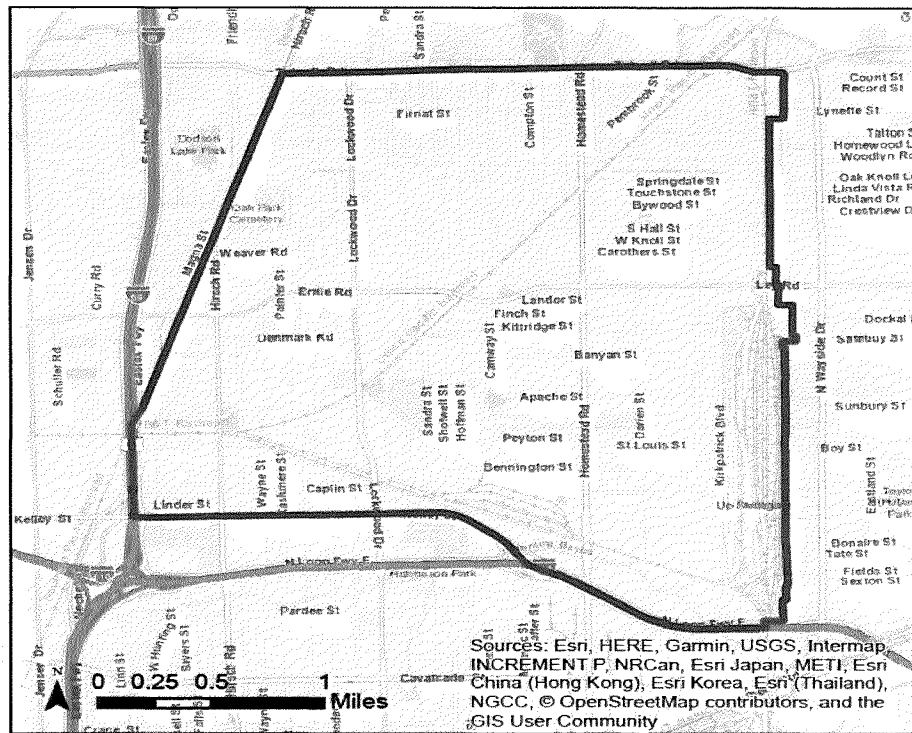


Figure 6: Location of Super Neighborhood 48

The Gardens were established in 1935 under the Suburban Resettlement Program, established by Congress under the Emergency Relief Appropriation Act.³⁵ The Suburban Resettlement Program was designed to provide homeownership opportunities to the poor and landless, while also relieving congestion in the inner city.³⁶ The program sought to combine the features of both urban and rural areas such as small farms, agriculture plots, schools, and community centers, to create a self-sufficient community.³⁷ More than 10,000 people were “resettled” in the 200 communities developed under its tenure.³⁸ The projects were primarily concentrated in the South, where farm tenancy, sharecropping, and discrimination had a significant impact on opportunity.³⁹ “The Resettlement Administration sought to ensure general success... by rigorously excluding those whose backgrounds might create problems and inevitable bad publicity.”⁴⁰ Despite helping to build these towns, Blacks were excluded as residents under the Resettlement program and did not receive any aid, perpetuating the history of Blacks exclusion from suburban areas.⁴¹ The Gardens were completed in 1937 and remain the only subsistence homestead community in Houston today with nearly every lot being more than one acre.

³⁵ Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48, Collaborative Community Design Initiative No. 5, Community Design Resource Center, Univ. of Houston, 13 (Special Edition: Harvey ed. 2018).

³⁶ Rafael Longoria & Susan Rogers, *THE RURBAN HORSESHOE*, OFFCITE 18–21 (2008).

³⁷ Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48, Collaborative Community Design Initiative No. 5, Community Design Resource Center, Univ. of Houston, 13 (Special Edition: Harvey ed. 2018).

³⁸ *Id.*

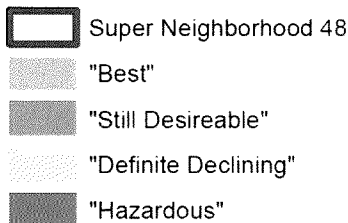
³⁹ *Id.*

⁴⁰ Joseph Arnold, *The New Deal in the Suburbs: The Greenbelt Town Program, 1935-1952*, 193, (1968).

⁴¹ Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48, Collaborative Community Design Initiative No. 5, Community Design Resource Center, Univ. of Houston, 13 (Special Edition: Harvey ed. 2018).

In 1940, Trinity / Houston Gardens was annexed by the City of Houston.⁴² Census data from 1950 reported that the area at this time was predominately White.⁴³ In 1960, Houston Independent School District (“HISD”) began to make its first integration attempts and the first Black student to attend an all-White school in the City was enrolled at Kashmere Elementary School, less than a mile from the Gardens neighborhood.⁴⁴ Integration attempts throughout Houston triggered “white flight” causing Whites to move out of neighborhoods they previously stayed in, in fear of more Blacks moving in. By 1960 the majority of the Gardens neighborhoods population, 71% was Black.⁴⁵ Since then due to both de jure and de facto segregation, The Gardens has remained a predominately minority community. Houston’s history of redlining and White flight to suburbs north of Super Neighborhood 48 likely created the community’s majority-minority demographic.

Redlining in Houston



Map created by Sophie Dulberg
6 December 2018
Data sources: ESRI Data, City of Houston,
Texas Map & Blueprint Co.

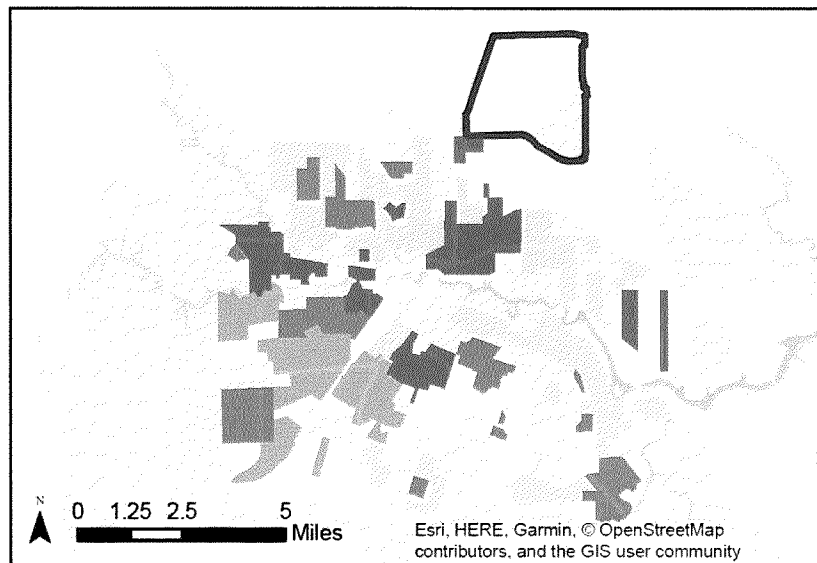


Figure 7: Redlining in Houston Relative to SN48

Redlining maps were created by the Homeowners’ Loan Corporation in the 1930s and claimed to designate the likelihood that homeowners in the area would default on their mortgages. Richard Rothstein, researcher, and fellow at the Thurgood Marshall Institute writes, “A neighborhood earned a red color if African Americans lived in it, even if it was a solid middle-class neighborhood.” As a result of a red, “hazardous,” designation, people trying to buy homes in those areas could not get federally insured loans. Today, the impact of these federal policies on the wealth and home ownership disparity between Black households and White households is apparent. While White families were given low-interest, federally-insured loans to move into the suburbs and have built equity in their homes, Black families have not been given the same government subsidies and continue to live in redlined neighborhoods riddled with

⁴² https://www.houstontx.gov/planning/Annexation/docs_pdfs/HoustonAnnexationHistory.pdf.

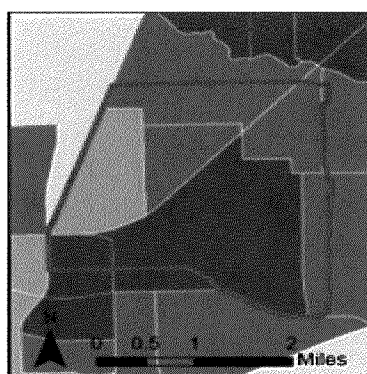
⁴³ Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48, Collaborative Community Design Initiative No. 5, Community Design Resource Center, Univ. of Houston, 13 (Special Edition: Harvey ed. 2018).

⁴⁴ *Id.*

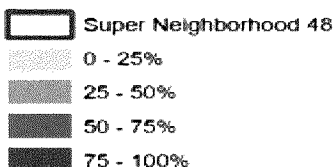
⁴⁵ *Id.*

disinvestment.⁴⁶ Although Super Neighborhood 48 was not explicitly redlined in this map, the neighborhood just south of it, Kashmere Gardens, was redlined and census data demonstrates that the Black population in Super Neighborhood 48 increased steadily following these policies, shifting from a majority White area in 1950 to a majority Black area in 1960.

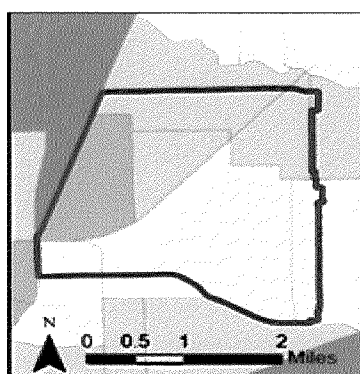
Between 2000 and 2016, the population of Super Neighborhood 48 has decreased from 18,054 to 15,798, a decrease of 12%.⁴⁷ During the same time period, the population of the city of Houston increased by about 12%.⁴⁸ From 2000 and 2016, the Hispanic/Latino population in Super Neighborhood 48 practically doubled from 16% to 30%, which falls in line with the city's increasing Hispanic/Latino population.⁴⁹ The Hispanic/Latino population remains below the city's average (37% in 2000 and 44% in 2016). The African American share of the population in the Gardens declined during the same period from 81% in 2000 to 67% in 2016 but is still well above the city's average African American population (25% in 2000 and 22% in 2016).⁵⁰ The White (non-Hispanic) population in Super Neighborhood 48 was 2% in 2016, significantly below the city average, at 26%.⁵¹



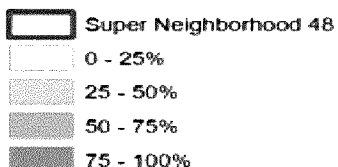
**Percent African American
by Census Tract**



Maps made by Sophie Dulberg
19 December 2018
Sources: American Community Survey 2016,
TIGER/Line U.S. Census Bureau, City of Houston



**Percent Hispanic/ Latinx
by Census Tract**



Figures 8 and 9: Minority Percentages by Census Tract

⁴⁶ Richard Rothstein, *The Color of Law*, 64 (2017).

⁴⁷ Steven Manson et al., IPUMS National Historical Geographic Information System: Version 12.0 [Database]. Minneapolis: University of Minnesota. 2017. <http://doi.org/10.18128/D050.V12.0>

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

The Gardens was once a thriving community with established schools and civic institutions. Over the years due to intentional disregard by the City for needed infrastructure improvements, equal access to municipal services, over concentration of industrial sites and lack of adequate enforcement, the Gardens community and residents have become more socioeconomically vulnerable. Social vulnerability is the “degree to which a community exhibits certain social conditions, including high poverty, low percentage of vehicle access, or crowded households,” which all impact a community’s ability to recover.⁵² As of 2016, the Gardens census tracts 2308, 2306, 2304, 2302, and 2301 had an average vulnerability rating of eighty-seven percent (87%), indicating a very high level of social vulnerability.⁵³

Poverty Status in Super Neighborhood 48

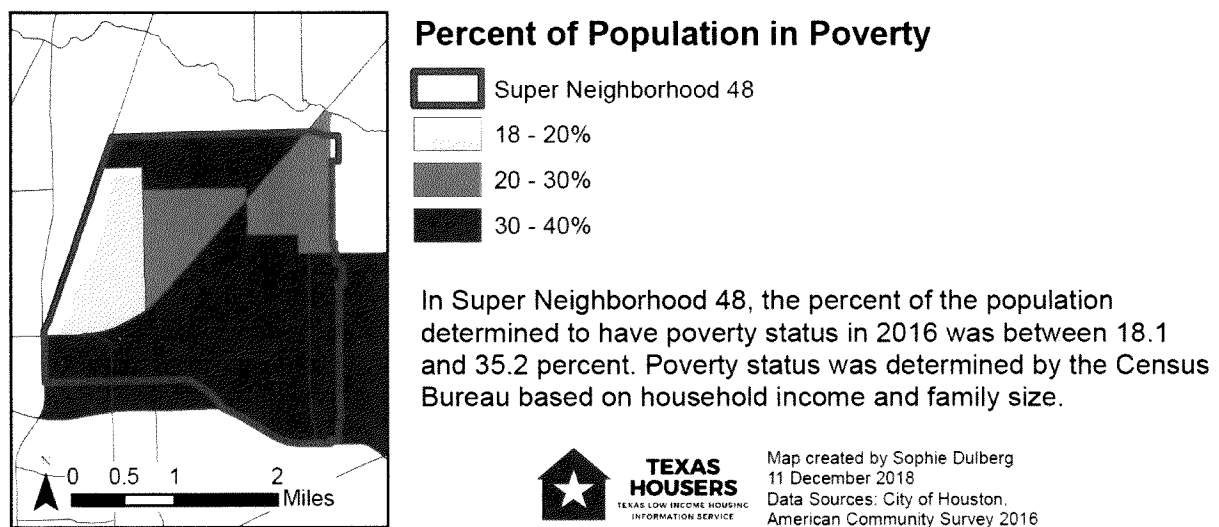


Figure 10: Percent of Population in Poverty.

In Super Neighborhood 48, the percent of the population determined to be in poverty in 2016 was between 18.1 and 35.2 percent. Poverty status was determined by the Census Bureau based on household income and family size.

As of 2015, the Gardens comprised of 15,798 residents.⁵⁴ At least 15 percent of residents identified as seniors being 65 years or older.⁵⁵ In 2016, almost one fourth of all households, (21%) in the Gardens were comprised of at least one person with a disability.⁵⁶ The unemployment rate in the Gardens is sixteen percent (16%), 4 times that of Houston at large (3.7%).⁵⁷ Nearly half of the Gardens forty-seven percent

⁵² *Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48*, Collaborative Community Design Initiative

No. 5, Community Design Resource Center, Univ. of Houston, 11 (Special Edition: Harvey ed. 2018).

⁵³ *Id.*

⁵⁴ https://www.houstontx.gov/planning/Demographics/docs_pdfs/SN/48_Trinity_HoustonGardens.pdf

⁵⁵ *Id.*

⁵⁶ Social Vulnerability Index, <https://svi.cdc.gov/map.html>.

⁵⁷ *Id.*

are living below the poverty the line with annual income being less than \$25,000, far below the Houston Average: \$46,187. With such pervasive poverty, public facilities such as schools, parks, streets, sidewalks, and neighborhood businesses will suffer from neglect.⁵⁸ Moreover, “access to good jobs, good schools and shopping does not occur in poor neighborhoods.”⁵⁹

2. Infrastructure Issues Affecting Super Neighborhood 48

a. The Gardens continue to endure disproportionate effects from industrial uses overtaking the nature of the community.

The City’s lack of zoning laws has left minority communities particularly the Gardens vulnerable to any type of development that property owners choose to bring into the neighborhood. Moreover, without the protection of deed restrictions, homeowners are subject to land use inconsistent with residential neighborhoods overall, specifically environmentally hazardous industrial businesses, such as trucking companies and junkyards. Gardens residents experience greater health and environmental risks because of unregulated growth in the number of industrial facilities and ineffective regulation of industrial toxins. Research has proven that living near hazardous waste sites can increase the risk for central nervous system birth defects, congenital heart defects and low birth weight in pregnant mothers.⁶⁰ Moreover, those living near industrial sites experience worse mental health due to increased stress levels, feelings of neighborhood disorder, personal powerlessness and depression.⁶¹

Houston’s industrial hazards are concentrated in predominately black and brown neighborhoods like SN48, devaluing homes, stripping home equity and furthering segregation. As illustrated in Figure 11, in the City of Houston, none of its superfund sites are in high opportunity areas. Yet, 50% of superfund sites are in minority neighborhoods.

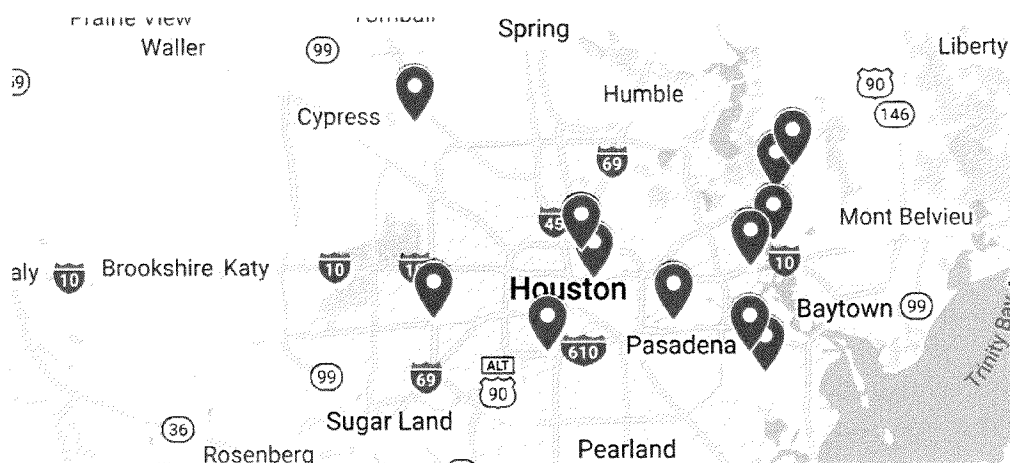


Figure 11: Location of EPA-Designated Superfund Sites in Houston, Texas

⁵⁸ Kirk McClure, *Deconcentrating Poverty with Housing Programs*, Journal of the American Planning Association, 90-99, (2008).

⁵⁹ *Id.*

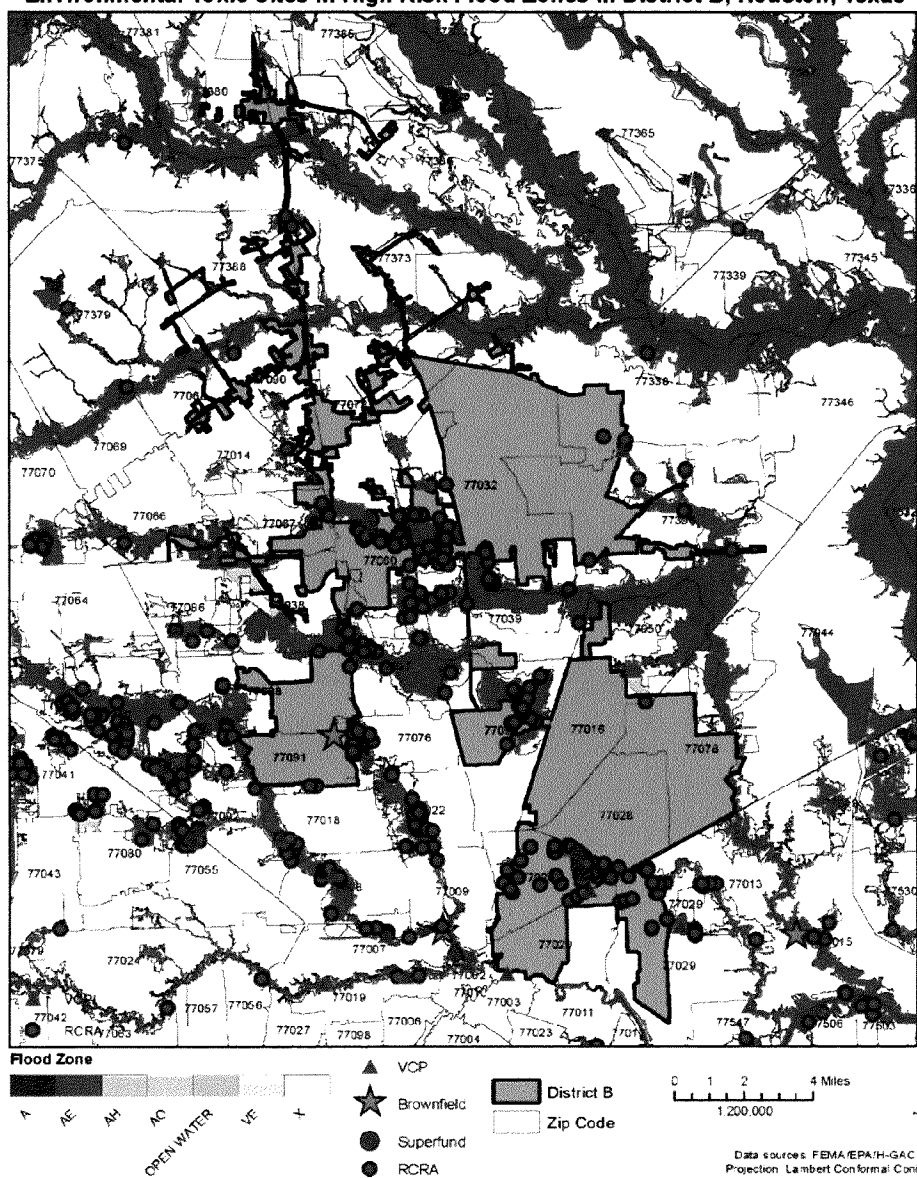
⁶⁰ Melissa Beeler, *Where you live matters: Assessing unequal access to healthy environments*, Texas Housers, (2016), <https://texashousers.net/2016/07/07/where-you-live-matters-assessing-unequal-access-to-healthy-environments/>.

⁶¹ *Id.*

Likewise, 89% of Municipal Solid Waste (MSW) Facilities are outside the high opportunity areas, clustered in communities like SN48, where there are five MSW Facilities.

Similarly, in Houston, 79% of its brownfields are outside of high opportunity areas with three sites located in SN48. Many of these brownfields are also located in flood plains, which only compounds flooding in the area when it rains because toxins are distributed by floodwaters. The map of District B shown in Figure 12 below reflects the ongoing threat of contamination with every new flooding event and risks for ZIP codes in SN48 (77016, 77028, and 77026) given their location in the flood plain and proximity to nearby Huntington Bayou.

Figure 12:
Environmental Toxic Sites in High Risk Flood Zones in District B, Houston, Texas



The absence of zoning in Houston leads to extreme issues in communities without the resources to protect their neighborhoods. Because Houston has no zoning, residents are left without standard tools for regulating industrial encroachment in residential neighborhoods. While the subdivisions in the more affluent areas of Houston either started with deed restrictions or had the resources to implement, amend and update them as needed, other subdivisions in low-income neighborhoods generally lack this protection through a complicated history.

At least one of the subdivisions of SN48, Rosedale Gardens, started with deed restrictions upon its founding in or around November 1938. These restrictions duly filed with the Harris County Clerk's office put in place 17 general land use restrictions for the subdivision. The eighteenth provision stated that the restrictions would remain in effect until January 1, 1963, but could be extended by majority of owners, if desired. However, because the restrictions governing Rosedale Gardens, like many of the other enacted restrictions of the same time period, contained racially discriminatory covenants, many residents chose not to renew these restriction. For example Rosedale Gardens Restriction No. 1 stated: "No part of the property shall be conveyed to, owned by, rented or leased to, used or occupied, by any person other than of the White or Caucasian Race, except that the owners' servants other than of White or Caucasian Race may occupy servants' quarters." The Texas legislature did not declare such covenants to be against public policy until 1985.⁶² Since 1985, the Texas Legislature has recognized the need to reinstate expired restrictions where there is no zoning because it creates uncertainty in living conditions and discourages investments in affected subdivisions. TEX. PROP. CODE § 201.002(a)(1).

Lone Star Legal Aid has been working in five separate subdivisions in the Gardens to create deed restrictions, but it will still need the support of the City on permitting decisions even after these restrictions are duly recorded in the real property records. Furthermore, the City has demonstrated a history of allowing replats, plat amendments and permitting commercial development even when the community has valid residential-use only deed restrictions or if lots in the area are generally designated residential as opposed to "reserve" for commercial uses.

Such situations lead to property owners in low-income communities with limited resources to raise such violations in court to hire attorneys to protect their deed restrictions. Yet it is the City's broken permitting process in violation of the Local Government Code that regularly allows commercial development in these residential areas and then fails to enforce its own regulations governing that development to protect its citizens from these industrial encroachments.

The City certainly does not disregard deed restrictions or development requirements in more affluent areas. The resulting contrast between development patterns in affluent, white areas and low-income, minority areas is distinct and troublesome, emphasizing the historic lack of investment in these areas and the lax permitting regulations and enforcement that occurs in these areas in the absence of zoning restrictions. Thus, property owners have very little protection from environmental hazards as further detailed below.

i. Trucking Companies, Junkyards and Permanent Flea Markets

Given the proximity to the Houston Ship Channel, the trucking industry is invading neighborhoods in Northeast Houston and setting up truck yards for the purposes of parking, storing and servicing 18-

⁶² TEX. PROP. CODE § 202.001(a)(5).

wheeler truck cabs in residential neighborhoods. Without zoning in Houston, the City has done little to protect residents from this invasion and has taken a “hands off” approach to any legitimate enforcement of existing city ordinances that could curtail or mitigate such activity. For example, the City’s permitting and code enforcement process seems to be haphazard when it comes to providing the public notice about land uses that are markedly changing the landscape of residential streets and neighborhoods. Some permits are issued for these facilities, yet most seem to be operating without any sort of permits, possibly contaminating stormwater with runoff from oils or fluids discharged when servicing the trucks on the properties and not meeting the City’s paving, grading or drainage standards or requirements.⁶³ Further, none of the known truck yards in the neighborhoods listed on Table 3 below have a Texas Pollution Discharge Elimination System (“TPDES”) permit with the Texas Commission on Environmental Quality (“TCEQ”), and thus, each facility may be eligible for a substantial fine should 1) it be proved that truck maintenance, repair, or cleaning occurs at the facility and 2) the city is willing to enforce this provision.⁶⁴ Finally, truck yards should also be responsible for paying “drainage impact fees” under the Houston Code.⁶⁵

Ex. (6), 7(C)

Ex. (6), 7(C)

⁶³ HOUSTON CODE § 26-581(1)(requiring parking facilities to be paved properly with “asphalt, concrete or all-weather surfacing or other permanent hard surface material); HOUSTON CODE § 26-581(2) (requiring parking facilities to be graded and provide permanent storm drainage facilities).

⁶⁴ HOUSTON CODE § 47-4711 (penalizing facilities operating without TPDES permit).

⁶⁵ HOUSTON CODE § 47-851 (imposing “drainage impact fee” for any site requiring a building permit after April 3, 2014); HOUSTON CODE § 10-2 (building permits from the City are required for the “construction or expansion of any parking lot”).

Moreover, once the truck yard is established, the vehicles coming to and from the facilities on these residential streets are destroying the pavement and increasing frequency of potholes and possible compounding existing drainage issues. These operators leave truck engines are left running for days on end causing noise and pollution and potentially violating city ordinances governing noise and idling trucks. See HOUSTON CODE § 30-4 (noise ordinance prohibiting “loud and unreasonable grating, grinding, rattling or squeaking from motor vehicles”); HOUSTON CODE § 21-302 (anti-idling ordinance).

Further, many of these operations that have a distinctly commercial flavor construct high fences, starting at 7½ feet to over 8-feet tall. These fences are opaque and usually made of corrugated aluminum or tin preventing neighbors from observing what’s going on behind the fence. Some fencing includes barb wire or razor wire on the fence facing the street or around the perimeters. Reports made to the Houston Police Department and the City’s Department of Neighborhoods regarding suspicious activities that may be going on behind these tall fences are generally rebuffed with statements that the police cannot entered property where unpermitted activity is suspected without a warrant. There appears to be no code enforcement regarding these fences. Table 3 below identifies some properties in violation of city ordinances, including those with suspect fencing, Ex. (6), 7(C)

Ex. (6), 7(C)

In addition, these commercial facilities in residential neighborhoods are not following mandatory city ordinance on landscaping to provide buffers to residential properties, schools, and other sensitive land users. HOUSTON CODE § 33-128 (requiring either a screening fence or landscape buffer for a non-residential or multi-family use adjacent to a single-family residential use). The neighboring properties destroy the look and feel of the adjacent residential properties, causing devaluation of properties. Several properties within SN48 appear to lack sufficient street trees and parking lot trees to comply with these ordinances as shown in the pictures above and below.

Ex. (6), 7(C)

Often times the junkyards and truckyards also have an abundance of wild or aggressive dogs in residence that are not properly secured on the property, threatening pedestrians on the neighborhood streets.

The proliferation of these types of commercial facilities in SN48 neighborhoods is evident from the following list of unpermitted facilities or structures:

Table 3: Industrial Nuisance Properties in the Gardens

Street No.	Block/ Intersection	Truck Yard	High Fence	Vehicle Storage/ Sales	Flea Market	Other Industrial	RVs Parked	Unpermitted Construction
7123	Apache St	X	X				X	
7124	Banyan St	X	X					
5314	Bennington St	X	X					
7615	Bonita St	X						
7908	Bonita St	X						
7124	Darien St	X					X	
7420	Darien St	X	X				X	
7012	Elbert St.		X		X			
5521	Glen Nook Dr	X		X				
8700	Hirsch Rd	X				X		
7119	Homestead Rd	X	X					
8913	Homestead Rd	X						
9019	Homestead Rd	X						
5204	Ireland St		X					
7210	Kirkpatrick Blvd	X	X					
7212	Kirkpatrick Blvd		X	X				
7502	Kirkpatrick Blvd	X						
7400	Kirkpatrick Blvd	X						
7700	Kirkpatrick Blvd	X					X	
5100	Laura Koppe Rd							X
5116	Laura Koppe Rd	X		X				

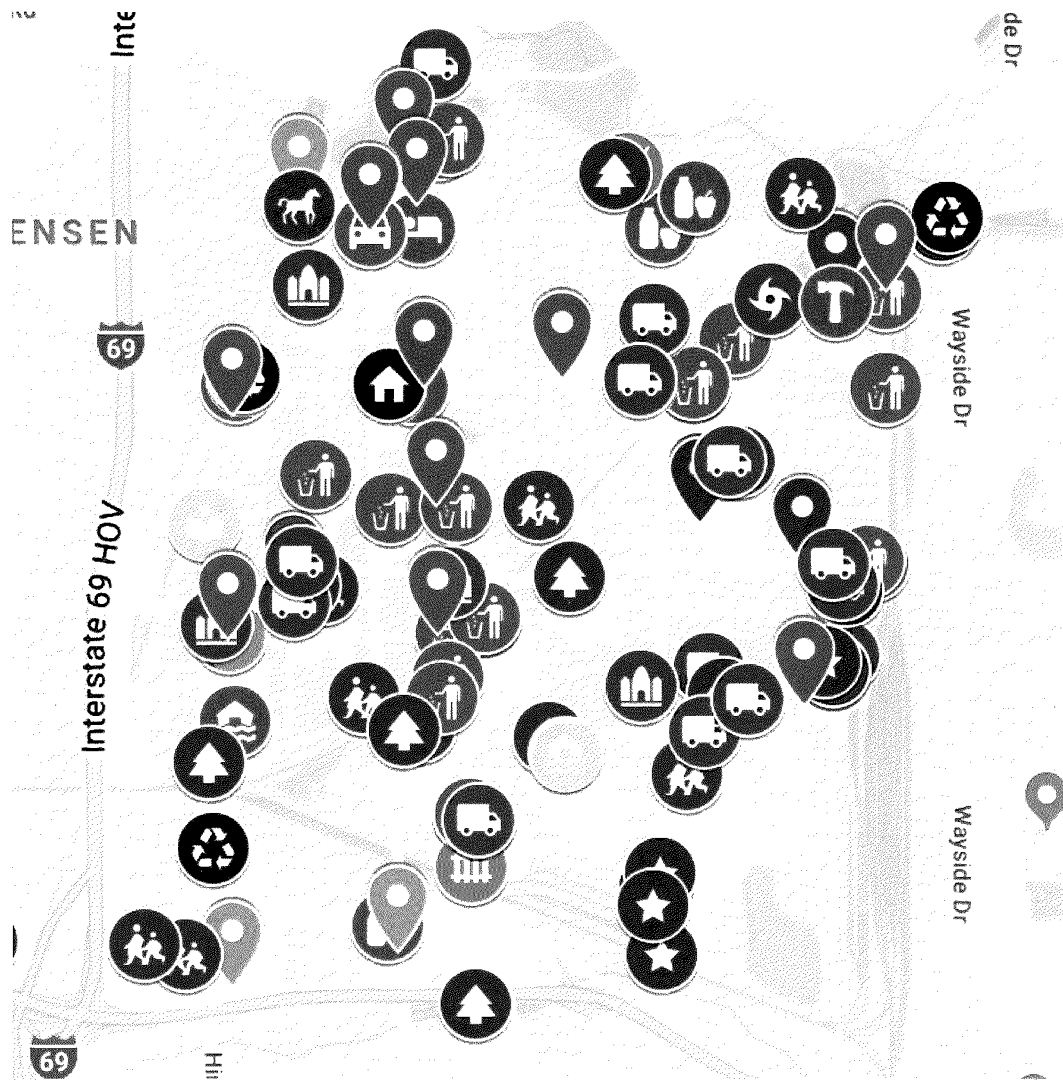
Table 3: Industrial Nuisance Properties in the Gardens

Street No.	Block/ Intersection	Truck Yard	High Fence	Vehicle Storage/ Sales	Flea Market	Other Industrial	RVs Parked	Unpermitted Construction
7902	Lavender St	X		X				
7906	Lavender St	X	X	X				
7601	Levering Ln		X					X
7517	Ley Rd		X					
7614	Ley Rd			X				
7618	Ley Rd			X				
7600	Los Angeles St							
7625	Parkhurst Dr						X	
5500	Parker Rd	X						
7418	Peachtree St			X	X			
8102	Peachtree St			X				
9710	Peachtree St		X			X		
9829	Peachtree St		X					
9940	Peachtree St		X			X		
8810	Spaulding St	X	X					
9110	Spaulding St	X						
4901	Tidwell Rd			X				
5201	Tidwell Rd				X			
4526	Weaver Rd	X						
6720	Weaver Rd	X		X				
8101	Weaver Rd			X				
7645	Weyburn St		X					

LSLA has also mapped the use of specific nuisance conditions, commercial properties and industrial facilities within SN48 as shown below in Figure 13, showing proximity to schools, churches and other vulnerable populations.⁶⁶

⁶⁶ See also Map of Trinity / Houston Gardens,
<https://www.google.com/maps/d/viewer?mid=1sTk0oGh9uwcu7yIDqMlwPbzM5pdDZmWR&hl=en&usp=sharing>.

Figure 13: Survey of Environmental Hazards in SN48 and Proximity to Vulnerable Populations and Residents



Finally, the City is known for retroactively granting permits for unauthorized construction in the neighborhood. Thus, many facilities are not built to City code, but then are subsequently allowed to stand even after reports are made to code enforcement regarding the unauthorized construction. Such practices are not only unfair to those who play by the rules from the outset, but also have led to the proliferation of unpermitted facilities that could potentially pose risks to the community since they are never duly inspected as required by City codes. For example, only three of twelve identified truck yards in SN48 have a required site plan or development plat on file with the City, and only one of those three site plans have been fully approved.⁶⁷ The Houston Permitting Center enforces site plans.

⁶⁷ HOUSTON CODE §§ 42-1 (referencing site plans), 42-22 (requiring “development plat” for any “new construction or enlargement of any exterior dimension of any building” or any commercial facility or commercial parking lot).

A prime example of the problems created by this lack of enforcement is the situation found at Holcombe Environmental Oil Services in the residential Houston Gardens Subdivision. This commercial business nestled in a residential subdivision started having Ex. (6), 7(C) coming from the industrial property to the City and the TCEQ. Both initially failed to investigate, claiming it was a sewer overflow. After LSLA pursued the issue on behalf of another group client, eventual soil tests showed elevated levels of dichloroethylene emanating from this industrial facility. These are the types of environmental threats facing community members, even those diligent in reporting these issues, because the City refuses to restrict permitting of these types of facilities in residential neighborhoods.

ii. Landfills

The City's history of discrimination is shown through its concentration of solid waste sites primarily in predominately Black communities and near Black schools. "From the 1920s through the late 1970s, Black Houston was unofficially zoned for garbage. Eleven of 13 city-owned landfills and incinerators (84.6 percent) were built in Black neighborhoods—a clear overrepresentation of one minority's neighborhoods in the hosting of city-owned solid waste facilities."⁶⁸

FACILITY	NEIGHBORHOOD	TYPE LANDFILL/INCINERATOR	NEIGHBORHOOD ETHNICITY
FOURTH WARD	FOURTH WARD	BOTH	BLACK
HOLMES ROAD	SUNNYSIDE	BOTH	BLACK
REED ROAD	SUNNYSIDE	LANDFILL	BLACK
KIRKPATRICK	TRINITY GARDENS	LANDFILL	BLACK
WEST DONOVAN	ACRES HOMES	LANDFILL	BLACK
NORTHWEST	CARVERDALE	INCINERATOR	BLACK
PATTERSON STREET	COTTAGE GROVE	INCINERATOR	BLACK
KELLEY STREET	KASHMERE GARDENS	INCINERATOR	BLACK
NAVIGATION	SECOND WARD	INCINERATOR	HISPANIC
WESTPARK	LARCHMONT	INCINERATOR	WHITE

Table 4: Locations of City-Owned Solid Waste Facilities (SWF)

*The above-city owned SWF operated from the 1920s up until the 1970s when Houston got out of the landfilling and incineration business. The ethnicity of the neighborhood listed in the table reflects the population at the time the facility was sited.*⁶⁹

Institutionalized discrimination through the use of redlining in the housing market, lack of zoning to protect residents and families, and decisions by public officials are paramount factors that have

⁶⁸ Robert D. Bullard, *The Mountains of Houston: Environmental Justice and the Politics of Garbage*, 29, (2014). <http://drrobertbullard.com/wp-content/uploads/2014/07/Final-2014-Bullard-Cite-Article.pdf>.

⁶⁹ Robert D. Bullard, *The Mountains of Houston: Environmental Justice and the Politics of Garbage*, 29, (2014). <http://drrobertbullard.com/wp-content/uploads/2014/07/Final-2014-Bullard-Cite-Article.pdf>.

contributed to Houston's Black neighborhoods becoming the "dumping ground" for the area's solid waste. "Moreover the discrimination of sitting solid waste facilities in minority communities stigmatized the black neighborhoods as "dumping grounds" for a host of other unwanted facilities, including salvage yards, recycling operations, and automobile chop shops."⁷⁰ In 1970-1971, residents of the Trinity Gardens neighborhood began to protest against the Kirkpatrick landfill. It was not until the election of Judson Robinson Jr., the City's first black City councilman, which the residents were able to get the plant to shut down.⁷¹

Unfortunately, Super Neighborhood 48 has five active Solid Waste Facilities in close proximity to its boundaries as identified below in Table 5:

Table 5: Locations of Active SWF in Proximity to SN48

<u>Facility Name</u>	<u>Location</u>
Republic Services Whispering Pines	8101 Little York Rd (77016)
WCA Ralston Road Landfill	6632 John Ralston Rd (77049)
Mr. Tuco WW Waste Services	7819 E Houston Rd (77028)
Republic Services McCarty Road	5757 Oates Rd. (77078)
Blue Bonnet Waste Management	10000 Beaumont Hwy (77078)

One of these landfills on John Ralston Road operated by WCA Waste is located adjacent to Greens Bayou in East Houston. Some of the nuisance conditions at the landfill—noise, odors, and wind-blown debris—became so bad for the adjacent residents, it prompted legal action from the East Houston Civic Club against the landfill operator for nuisance conditions. While the impacts of this facility in the Gardens are not as severe, they are still felt and contribute to a decline in property values as the road to the landfill starts in the Gardens and a trail of debris is left along the roadside as people leave the dump without dumping and then dump in the Gardens neighborhood. Despite repeated requests to 311, as further explained below, the trash destined for the dump—mattresses, tires, and other items requiring the payment of a deposit—stays on the streets of the Gardens for weeks.

In addition, according to the H-GAC Closed Landfill Inventory,⁷² the following closed landfill facilities area also near or within the SN48 neighborhood boundaries as shown in Table 6:

Table 6: Locations of Closed Landfills in Proximity to SN48

<u>Within SN48</u>	<u>Facility Name</u>	<u>Location</u>	<u>Site ID</u>
X	Homestead Road Sanitary Landfill	5600 Homestead (77028)	U224

⁷⁰ Robert Doyle Bullard & Beverly Wright, *The Wrong Complexion for Protection: How the Government Response to Disaster Endangers African American Communities*, 63, (2012).

⁷¹ Robert D. Bullard, *The Legacy of American Apartheid and Environmental Racism*, Journal of Civil Rights and Economic Development, Vol. 9: Iss. 2, Article 3 (1994), <https://scholarship.law.stjohns.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1460&context=jcred>

⁷² See H-GAC, Closed Landfill Inventory, <http://www.hgac-cli.com/>

Table 6: Locations of Closed Landfills in Proximity to SN48

Within SN48	Facility Name	Location	Site ID
	BFI McCarty Landfill	N of US 90, S of Ley Road and 0.9 mile E of FM 527 (11013 Beaumont Highway) (77028)	U1726
	East Houston Landfill	Feland at East Houston (77028)	U1236
	Holcomb Landfill	7406-1/2 Furay Road, S side of St. (77016)	U1712
X	Kirkpatrick Landfill	Kirkpatrick Blvd and North Loop (77028)	U229
	NEGEV Corporation	500 feet S of US 90 (McCarty Road / Beaumont Hwy), 1100 feet E of OST Drive, 0.7 mile W of Oates Road, 1400 feet N of Hunting Bayou (77013)	U1743
X	Tony Munoz	7206 Sayers (77016)	U1233

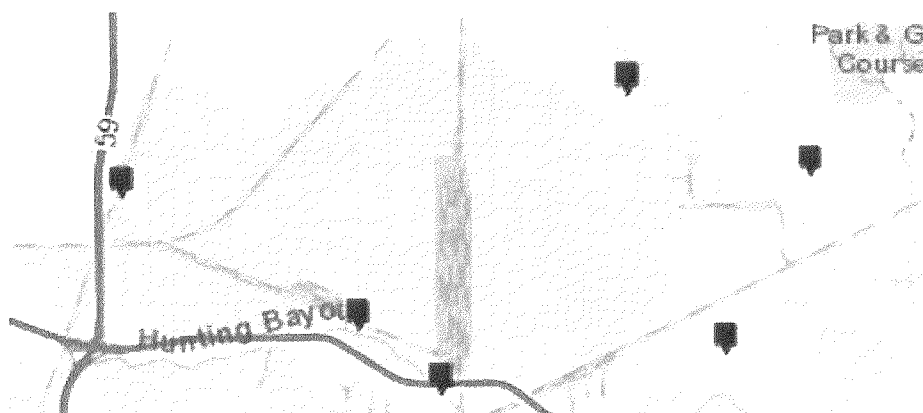


Figure 14: Locations of Closed Landfills near SN48

iii. Concrete Crushing Facilities and Concrete Batch Plants

As a result of years of disinvestment in the Gardens community, the land values in the Gardens have become inexpensive, creating the perfect opportunity for developers and industrial projects. Today, much of the east end of the Gardens has been converted to industrial use, changing the nature of the once single-family neighborhood for families, children, and seniors in the neighborhood. Super Neighborhood 48 has numerous industrial sites that contribute to the cumulative air quality risks in the area. These sites include Vulcan Materials Company, which operates a large aggregate storage area in the community where tall piles of various materials stretch for almost half a mile and sometimes generate large clouds of dust that pollute the neighboring residential area. There is also a large sand pit operation on Homestead Road which provides an additional source of particulate pollution in the area. These facilities, which typically generate higher levels of particulate matter, disproportionately expose the Gardens Community to environmental hazards such as air pollution which can lead to significant health issues. “Out-of-hospital cardiac arrest (McNally et al., 2011) is a health effect associated with short-term exposure to air pollutants,

including ozone and particulate matter (Ensor, Raun, & Persse, 2013), which have been among the triggers associated with cardiac arrest.”⁷³

With its boundaries, Super Neighborhood 48 has seven facilities known as “concrete crushing” facilities identified below in Table 7:

Table 7: Locations of Concrete Crushing Facilities

<u>Concrete Crushing Facilities</u>	<u>Location</u>
Redbox	6615 Tidwell Rd (77016)
Ace Asphalt & Concrete	7557 Banyan St (77028)
Martin Marietta- Houston Cement Terminal	2415 Cavalcade St (77026)
Vulcan Materials Company	6505 Homestead Rd # A (77028)
Southern Crushed Concrete	6519 Liberty Rd (77028)
Southern Crushed Concrete	3605 Schalker Dr (77026)
Southern Crushed Concrete	3600 Schalker Dr (77026)

As identified in Table 8 below, Super Neighborhood 48 has eight concrete batch plants (CBPs) inside the boundaries of its 6.87 square mile neighborhood. In other words, SN48 has a little more than 1 concrete batch plant per square mile within the mostly residential community.

Table 8: Locations of Concrete Batch Plant Facilities

<u>Concrete Batch Plants</u>	<u>Location</u>
Alamo Ready Mix	5303 S Lake Houston Pkwy (77049)
Best Redi-Mix	7119 Kindred St (77049)
Queen Ready Mix	8702 Liberty Rd (77028)
Cemtex Concrete Ready Mix	5716 Jensen Dr (77026)
Texas Concrete Ready Mix	6001 Homestead Rd (77028)
Texas Concrete Ready Mix	6523 Homestead Rd (77028)
Texas Concrete Ready Mix	3315 Carr St (77026)
Five Star Ready Mix	8001 Ley Rd (77028)

Two of these concrete batch facilities, both owned by Texas Concrete Ready Mix, are next door to each other on Homestead Road.

Material stockpiles for concrete batch plants are essentially big piles of dirt and dust and are a significant source of wind-borne particulate pollution from both concrete crushing facilities and concrete batch plants into the neighborhood. If a facility keeps its stockpiles uncovered and too close to the property line, it can cause violations of emissions limits and threatens the health of nearby residents. Watering the stockpiles to prevent these emissions is often ineffective, especially on a hot summer day when the water evaporates nearly as fast as it can be sprayed on. Recent drives by the facilities on the list above suggest

⁷³ Community Health Profile: Health Service Delivery Area B (North and North-East 2014), Environmental Health, <http://www.houstontx.gov/health/chs/2014CommunityHealthProfile%20Area%20B-Nov%202014.pdf>

that most of the industry keeps their stockpiles uncovered for convenience. Many of these facilities are permitted to operate 24 hours/ 7 days a week increasing the chance of emissions off property due these uncovered stockpiles.

Despite community complaints and testimonies regarding large plumes of dust leaving these facilities' property line for more than 30 consecutive seconds (which is a clear violation of the standard permit for a concrete batch plant), these facilities are almost never cited by TCEQ for these violations due to the lack of enforcement. In fact, at a recent public meeting regarding a concrete batch plant in the area, Don Nelon in the TCEQ Air Permits division suggested that the agency relies on the community to police these facilities through the complaint and investigation process. In practice, this approach is not functional, in part because many people do not know that the process exists, and also because it is not suited to the types of violations that cause the most problems. An individual in the neighborhood recently complained about excess emissions from Texas Concrete Enterprise Ready Mix—large clouds of particulate crossing the property line, a clear violation of permit terms—but the emissions had ceased by the time the TCEQ investigator arrived, some days later. The investigator did cite the operator for a few minor violations of other rules, but these citations have had little effect on the intermittent particulate pollution episodes that plague this facility and others like it.

Moreover, the lack of code compliance by the City of Houston has continuously subjected vulnerable populations such as children to incessant and high levels of exposure to harmful pollutants. Sensitive populations like children and the elderly are particularly susceptible to particulate pollution, which exist near these types of facilities. For example, Ernest McGowen Sr. Elementary School, attended by 433 children ages 5 to 12, and Lyndon B. Johnson General Hospital, are both less than half of a mile from Texas Concrete. Kashmere High School, with over 550 students ages 14 to 18, and Houston Gardens Park are each less than three-quarters of a mile from Texas Concrete. In addition, Scarborough Elementary School is located directly across the street from a concrete batch plant and industrial yard. Elementary students inhale concrete dust from batch plants while they play at recess. The City's disregard is also evidenced through its allowance of a concrete batch plant near Emerald Apartment, a federally subsidized housing project. On many occasions due to proximity, the dust from batch plants is visible in the air.

Similarly, the concrete batch plant located on Homestead Road operated by Texas Concrete Ready Mix has an insufficient detention pond, so the site regularly floods and is underwater after large storms. Such flooding contaminates nearby storm water leading to contaminated runoff. The site is less than one mile from Ernest McGowen Sr. Elementary School and Kashmere High School and adjacent to residential areas.

The pollutants of concern at concrete batch plants, principally include:

- particulate matter less than or equal to 2.5 microns in diameter ("PM2.5"),
- particulate matter less than or equal to ten microns in diameter ("PM10"),
- crystalline silica, and
- cement dust.

Table 9 below shows comparative air monitoring data from intersections within SN48, as compared with the closest permanent air monitor at Clinton Drive. The results of this comparison show, in many instances, that the PM measurements within the SN48 boundaries are 2-3 times as high the PM

measurements at the Clinton Drive Monitor. While the PM within SN48 cannot be conclusively only attributed to CBPs, the elevated PM levels within SN48 are noteworthy as the PM levels could correspond to the very high concentration of CBPs.

Table 9: Air Quality Monitoring Conducted by City of Houston in Super Neighborhood 48 compared with Clinton Drive Air Monitor⁷⁴

DATE	SITE	SN48 Avg. PM	SN48 AQI	Clinton Dr. PM2.5 Hourly Avg	Clinton Dr. PM2.5 Daily Avg	Clinton Dr. AQI
9/29/20	Kirkpatrick and Banyan	4.2	18	3.5	7.825	15
9/29/20	Bennington and Shotwell	5.1	21	3.6		15
9/29/20	Kirkpatrick and 610	11.6	48	3.2		13
10/1/20	Kirkpatrick and Banyan	7.85	33	6.2	13.38	26
10/1/20	Bennington and Shotwell	11.95	50	6		25
10/1/20	Kirkpatrick and 610	8.875	37	9.8		41
10/6/20	Kirkpatrick and Banyan	38.3	108	10.9	15.25	45
10/6/20	Bennington and Shotwell	46.1	127	12.1		51
10/6/20	Kirkpatrick and 610	59.575	153	12.8		52
10/15/20	Kirkpatrick and Banyan	24.1	76	11.2	10.98	47
10/15/20	Bennington and Shotwell	38.83333 333	109	9		38
10/15/20	Kirkpatrick and 610	24.1	76	10.6		44
10/20/20	Kirkpatrick and Banyan	18.575	64	6	8.12	25
10/20/20	Bennington and Shotwell	16.625	60	7.2		30
10/20/20	Kirkpatrick and 610	28.225	85	6.6		27
10/22/20	Kirkpatrick and Banyan	42.825	119	12.8	9.82	52
10/22/20	Bennington and Shotwell	33.4	96	11.5		48
10/22/20	Kirkpatrick and 610	28.75	86	9.3		39
10/27/20	Kirkpatrick and Banyan	33.625	96	19.4	12.54	66
10/27/20	Bennington and Shotwell	38.525	108	17.7		63
10/27/20	Kirkpatrick and 610	40.125	112	16		59

This summer, during an open comment period on the standard permit for concrete batch plants (CBPSP), Super Neighborhood 48 asked TCEQ to consider the impacts of inundating a community with concrete batch plants and the air quality consequences. The TCEQ should include, as part of its siting criteria, an analysis of the number of CBPs within the proposed community and the current burdens on air quality within that same community. Using data like the number of CBPs in the area, in conjunction with the baseline air quality data, prior to the TCEQ issuing the facility a permit, will result in better permitting decisions. Or, in cases where the community appears to already be saturated with CBPs, as in SN48, the TCEQ, as part of the CBPSP, to consider placing limits on the number of CBPs that can operate (1) within a residential community and (2) placing limits on the proximity that CBPs may be to one another. This way, the TCEQ can ensure the CBPSP is adequately protective of the adjacent communities and the hosting communities. Commenter suggests that no more than one CBP should be permitted per square mile. Further, SN48 suggested that if a proposed CBP is contemplated within an un-zoned community, that the

⁷⁴ Data collected by the City of Houston Health Department, Bureau of Pollution Control & Prevention; Data compilation and comparison by Air Alliance Houston in partnership with Lone Star Legal Aid.

TCEQ consider other industrial facilities in its analysis, and if necessary, further limit the CBPs to 1 every 2 square miles in order to alleviate the burden on any single community's air quality.

While the TCEQ may be unwilling to adopt these restrictions, the City has a role in helping residential neighborhoods escape the consequences of siting these facilities in residential neighborhoods. Simple zoning restrictions, in place prior to permits being filed, such as a deed restriction program, which helped neighborhoods adopt such restrictions, or agreements to zone certain predominately residential areas in these socially vulnerable neighborhoods could help protect them from these encroachments and poor air quality. If the landowner is deed restricted to the type of development, he is unable to apply for a permit from TCEQ to begin with. Taking this protective step could eliminate so much anxiety for Houston residents in SN48 that are under threat of these applications being filed for permitting facilities in their neighborhood.

iv. Metal Recycling Facilities

Houston air authorities are aware of the dangers of air pollution caused by metal recyclers and car crushers, which can generate a smoke and significant noise, posing a nuisance to the neighborhood. The smoke comes from cutting metal with torches and from fire when vehicle gas tanks aren't drained properly. Explosions can occur when propane tanks are fed into the maw of the crushers. In 2012, testing outside several metal recycling operations in Houston found dangerous levels of hexavalent chromium also known as Chrome VI.⁷⁵ When inhaled, hexavalent chromium is deposited in the lungs, can penetrate cells and cause free radicals, which damage DNA, ultimately causing lung cancer.⁷⁶ Thus, individuals living near these facilities could have increased risk of developing cancer – almost 600 times what would be acceptable to federal health scientists. Table 10 includes a number of metal recycling facilities located in or around SN48:

Table 10: Location of Metal Recycling Facilities

<u>Facility Name</u>	<u>Location</u>
Jesse's Recycling	8910 Hirsch Rd (77016)
Junkn2cash	8126 Furay Ave (77016)
CMC Recycling	2015 Quitman St (77026)
Houston Scrap Metal Recycling	7837 Tidwell Rd (77028)
Prestige Recycling	7615 E. Mt. Houston Rd (77050)
Dollar Metal & Recycling	7218 E. Mt. Houston Rd (77050)
Best American Iron & Metal	5417 N. McCarty St (77013)

v. Brownfields

A "brownfield" is a former industrial or commercial site where future use is affected by real or perceived environmental contamination. As highlighted above, SN48 is home to approximately three brownfields sites, which includes the neighborhood's efforts to quantify all facilities in SN48's borders

⁷⁵ Ingrid Lobet, Dangers in the Air Near Metal Recyclers, Houston Chronicle (Dec. 29, 2012),

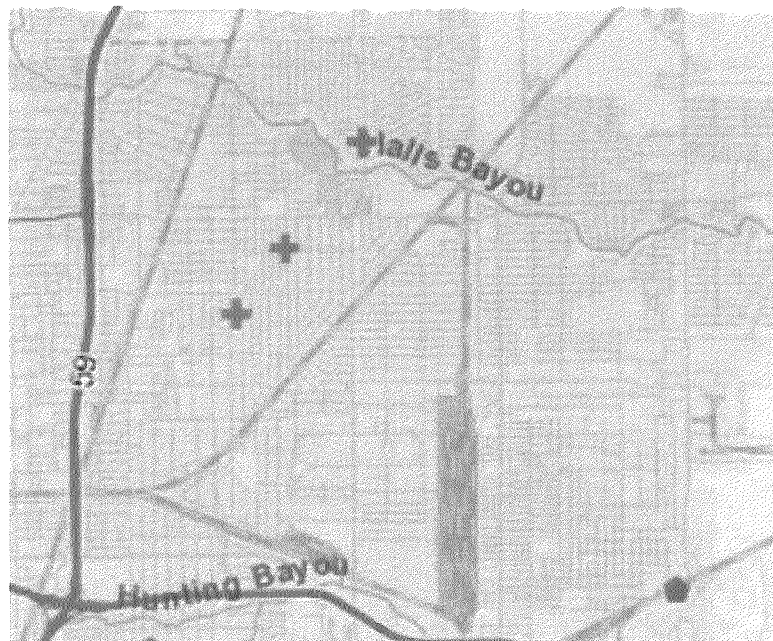
<https://www.houstonchronicle.com/news/houston-texas/houston/article/Danger-in-air-near-metal-recyclers-4154951.php>

⁷⁶ *Id.*

registered with TCEQ, EPA, and the Texas Railroad Commission cleanup programs.⁷⁷ Many of these brownfields do not experience any further redevelopment once the sites are contaminated because of the expensive cost of remediating the sites. The City has not put any effort or focus into changing these economic patterns either.

Table 11: Brownfields in SN48

Location	Type of Contamination	Property Size	Status of Cleanup
Homestead Plaza Shopping Center	Brownfield	11.64 acres	None
8601 Peachtree Street	Brownfield	0.15 acres	None
0 Bertrand Street	Brownfield	0.35 acres	None
BNSF Houston Train Derailment	Response to Liquid Petroleum Gas	6-train car derailment	2004 Response



*Figure 15: Locations of Brownfields and Emergency Responses in SN48
Brownfields shown with Orange Crosses; Emergency Responses shown with Purple Pentagon*

One such story is a Ex. (6), 7(C)
Ex. (6), 7(C)
Ex. (6), 7(C)
Ex. (6), 7(C)

The community like SN48 ends up paying the penalty for these contaminated properties because there are no incentives to redevelop the properties and they add to the blight in the neighborhood, which just creates an association with more blight. Worse the long-term effects of this chemical contamination include cancer.

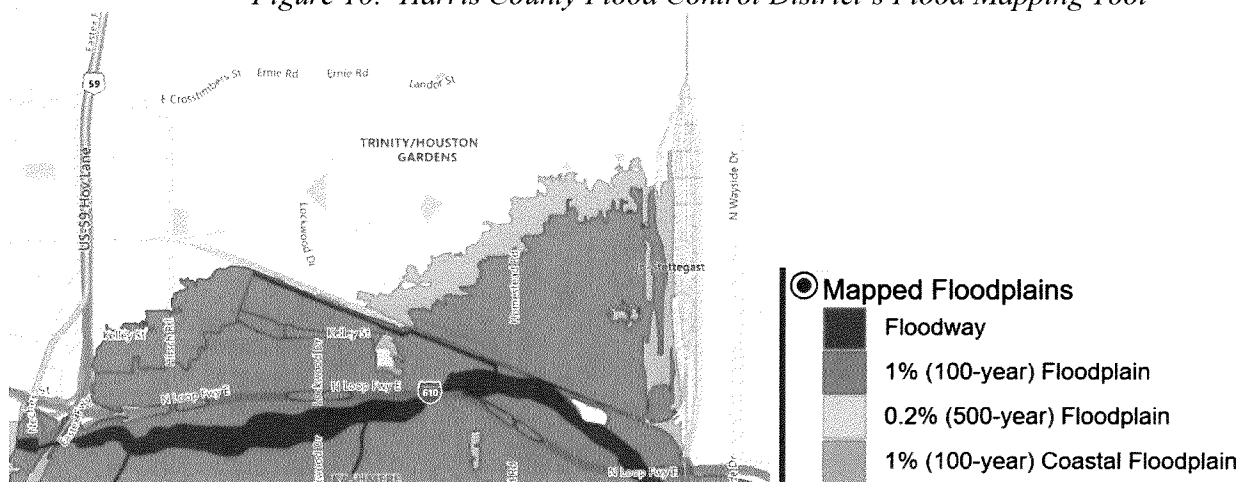
⁷⁷ <https://www.epa.gov/cleanups/cleanups-my-community>

Another significant brownfield resulted from a 2004 train derailment. Never fully remediated, the toxins deposited at the site have been steadily distributed across Houston by floodwaters in intervening years. On October 3, 2004, EPA Region 6 was notified by the National Response Center (NRC Report #737232), of a BNSF train derailment that occurred near the intersection of McCarty (US Highway 90A) and Mesa Road (FM 527) in Houston, Harris County, Texas. The incident occurred in an industrial area in east central Houston, Texas. No injuries or evacuations were reported. The EPA phone duty officer deployed EPA contractors located near Houston to the scene to assess site conditions and provide air monitoring and/or other technical assistance if needed. Upon arrival, the EPA contractors verified nine cars had derailed. Six of the cars were of environmental concern: two containing Liquid Petroleum Gas (LPG) and four containing a combustible residue liquid with identification number UN 1268. The structural integrity of the cars remained intact. No evidence of damaged valves, leaks, or spills were observed from the derailed cars. Officials on-site included BNSF and UP Railroad, M&M Protection, and Hulcher Environmental Services. The nearest navigable water to the incident is Hunting Bayou, located approximately 1½ miles due southwest of the incident. Hunting Bayou flows southeast into Buffalo Bayou and eventually into the Houston Ship Channel. The cause of the derailment is unknown at this time. The Potentially Responsible Party ("PRP") is BNSF Railroad.

On October 3, 2004, UP, BNSF, BNSF contractors, M&M Protection and Hulcher Environmental Services, arrived on-scene to stabilize the incident between 2045 and 2345 hours. Air monitoring was performed by the BNSF contractor at the time of the incident. Air monitoring results for volatile organic compounds, carbon monoxide, hydrogen sulfide, and lower explosive limits (LELs) were not detected, nor were any LELs reached. EPA contractors arrived on-scene on October 4, 2004 at 0000 hours to assess the situation and provide photo documentation. The EPA contractors confirmed that the rail cars were intact and there was no evidence of damaged valves, leaks, or spills. The EPA contractors departed the site on October 4, 2004 at approximately 0030 hours.

As noted above, based on the current flood plain maps, much of District B and SN48 are in the 100-year and 500-year flood plain, putting residents at risk of contamination with each new flooding event when these sites are never fully remediated. It is also well-known that these maps are outdated and may not reflect the true flooding risk of the area given recent increases in rainfall in Houston from 2015-2019 and the impacts of climate change.

Figure 16: Harris County Flood Control District's Flood Mapping Tool



vi. Wastewater Treatment Plants

Two municipal wastewater treatment plants sit within 3 ½ miles of one another in the Trinity / Houston Gardens neighborhood: Homestead Wastewater Treatment Plant and FWSD 23 Wastewater Treatment Plant. According to TCEQ records, both of these facilities are significantly out of compliance with state and local regulations. For instance, TPDES Permit No. WQ0010495023 (TPDES Permit) allows Homestead POTW to discharge treated effluent to the Hunting Bayou, which feeds into the Houston Ship Channel/Buffalo Bayou Tidal via Segment No. 1007 of the San Jacinto River Basin. But according to the TPDES Permit, the City of Houston's pretreatment program is not in compliance with relevant federal and state regulations.⁷⁸ The TPDES permit requires Homestead POTW to come into compliance by September 2022. The same problem exists at FWSD 23 Wastewater Treatment Plant.⁷⁹ Additionally, the active violations at FWSD 23 Wastewater Treatment Plant include failures to meet one or more permit limit parameters, failures to prevent unauthorized discharge of wastewater, and failures to properly operate and maintain the facility.⁸⁰

vii. Open Drainage Ditches

In 2014, the City's Housing and Community Development Department commissioned a study on the City's drainage infrastructure, exposing the great disparities in the City's flood protection between communities of color and white communities. The study revealed that open drainage ditches were more prevalent in minority communities, while the higher income white communities have closed drainage systems underground similar to those in most medium and large cities.⁸¹ Of the roadside ditches in Houston, 88% are concentrated in minority areas, with nearly half, 43% of all drainage ditches being found inadequate.⁸² Moreover, the ditches designated as inadequate, could not even handle a two-year storm, or one that has a 50 percent chance of occurring in any given year.⁸³

The concentration of open drainage ditches in minority communities is partly due to the City's history of annexing areas with rural infrastructure, like the Gardens, without updating the public infrastructure.⁸⁴ Many homes in the Gardens community were built before 1970 and still, today retain the outdated open or roadside drainage ditch infrastructure. As a result, the Gardens and similar communities are repeatedly at risk during normal storms. The inadequate drainage system in the Gardens further reflects the discrimination perpetuated by the City towards residents. Hunting Bayou, a major waterway runs along the boundary between Kashmere Gardens and Houston Gardens neighborhoods creating a substantial flood risk for both communities, which is a persistent hazard. Yet, the City has intentionally disregarded

⁷⁸ TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TPDES Permit No. WQ0010495023 (Issue Date: October 17, 2017) at 37-41.

⁷⁹ TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, TPDES Permit No. WQ0010495016 (Issue Date: November 21, 2019, 2017) at 37-41.

⁸⁰ Central Registry. Wastewater Permit WQ0010495016 for FWSD 23 WWTP (RN101612158). Notice of Violations. (31 July 2020), available at https://www15.tceq.texas.gov/crpub/index.cfm?fuseaction=iwr.novdetail&addn_id=991360822002066&re_id=984360812002066.

⁸¹ Christina Rosales, *Houston knew neighborhoods of color were inadequately protected from even modest storm events*, Texas Housers (2017).

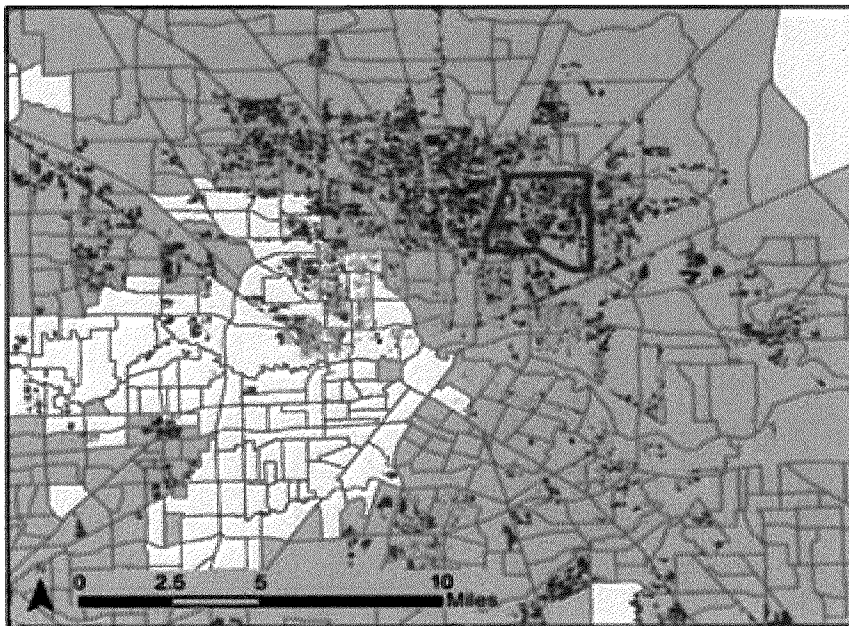
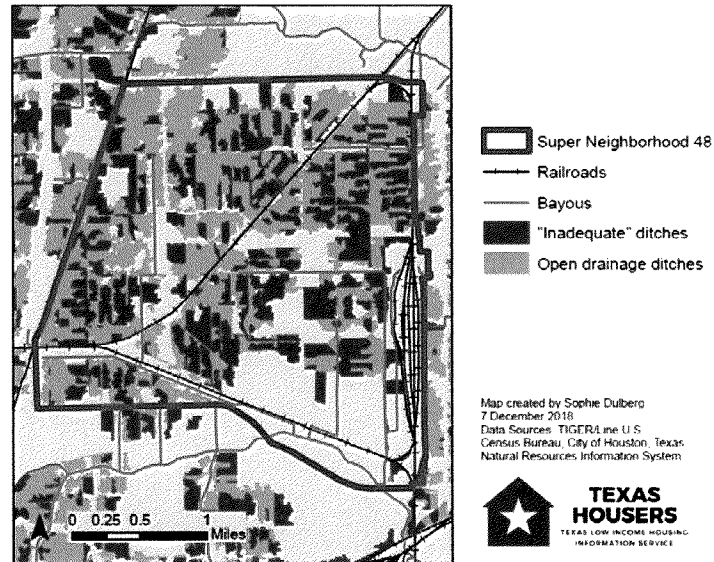
⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

the protection of these residents through the construction and poor maintenance of open drainage ditches in this area.

Ditches Labeled "Inadequate" by the City of Houston



Figures 17 and 18: Ditches labeled "inadequate" by the City of Houston pursuant to its Inadequate Drainage Study.

Citywide, open ditch drainage lines up with majority Black and Brown neighborhoods. Many of these ditches are deemed "inadequate" by the City. Even the highest capacity, well-functioning open ditches are not equipped to confront a 100-year storm.

The City's inequitable public investment in drainage infrastructure has a clear disparate impact on the basis of race, color and national origin. The failure of the City to provide equal levels of flood protections to African-American- and Latino-segregated neighborhoods harms people of color directly by depressing the economic value of their homes and subjecting them to disproportional exposures to hazards from flooding. The City has failed to act on its own study to remedy the inequalities in this critical infrastructure to the obvious detriment of the Gardens' community in the last 20 years. Thus, the City is knowingly operating a separate and unequal storm water system that results in disproportionate and preventable flooding of African-American and Latino neighborhoods.

In 2001 during Tropical storm Allison, 8,270 homes in the Hunting Bayou watershed flooded. In 2017, during Hurricane Harvey Hunting Bayou's level was recorded as being 2.2' higher.⁸⁵ The City has estimated that 54% of the homes in the Gardens flooded during Hurricane Harvey.⁸⁶ There were large numbers of rescue requests over several days following Hurricane Harvey, largely concentrated in the northeast quadrant of Loop 610 near the Gardens.

Some residential streets do not even have an open drainage ditch as a buffer from stormwater. Many homes within the Gardens were constructed below street level, creating an even high level of vulnerability in the event of a natural disaster. Particularly, Union Pacific Railroad blocks the drainage system from houses near Sandra Street and Baton Rouge, creating a dam that pushes flood waters back towards housing and residents.

Moreover, the presence of open drainage ditches in the neighborhood has also become a repository for trash, illegal dumping, and mosquitos. After Hurricane Harvey, trash from the storm accumulated creating a risk of contamination and a barrier to stormwater protection for residents. These communities further have disproportionate exposure to the Zika virus transmitted by mosquitos that breed in standing water in open drainage ditches, which is a public health emergency in Harris County and the City of Houston.

Thus, even if open-ditch drainage is arguably not innately inferior, the system is inferior when the ditches are not properly maintained. The Northeast sector, including the Gardens, has the highest density of open-ditch drainage in the City. The City's policy of placing the onus of maintaining culverts beneath private driveways crossing the open ditches on the private homeowner needs to be reserved. It is not equitable that the City will maintain the drainage systems in other parts of the City, but not here. Here, the City is not servicing these areas with specific infrastructure needs (i.e., regular maintenance) sufficiently to prevent issues being caused by the City-built infrastructure. This situation goes hand-in-hand with the City's reliance on community residents to report drainage ditch concerns to the City as opposed to proactively patrolling these areas to address a known problem.

Correcting the substantially inadequate storm water drainage protection provided to low-income communities of color, in contrast to infrastructure provided and maintained by the City in higher income and majority white neighborhood would not only address disaster-related impacts, but "leav[e] communities substantially positioned to meet the needs of their post-disaster population, economic and environmental conditions." 81 Fed. Reg. 39,693 (June 17, 2016).

⁸⁵ Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48, Collaborative Community Design Initiative No. 5, Community Design Resource Center, Univ. of Houston, 7 (Special Edition: Harvey ed. 2018).

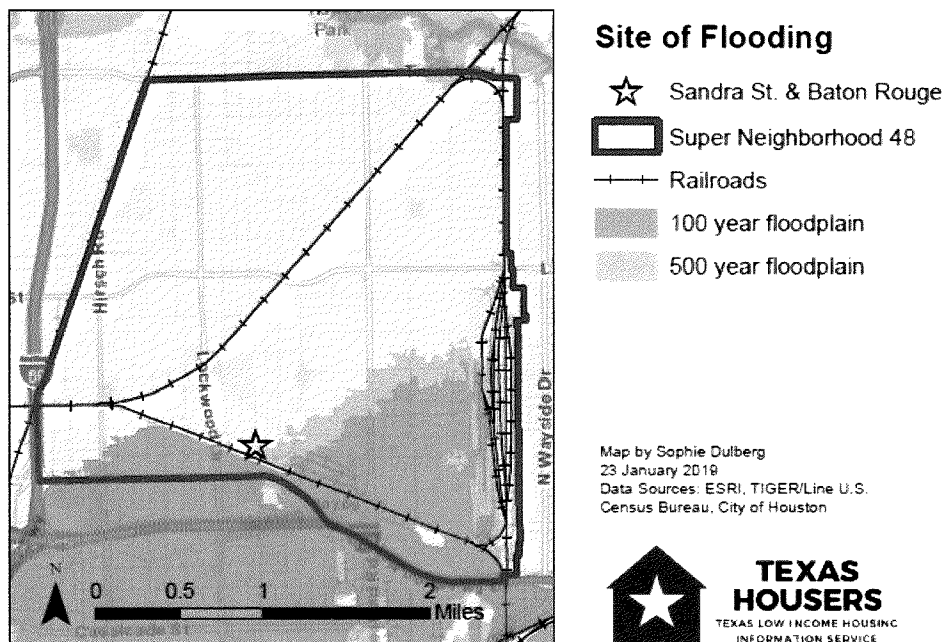
⁸⁶ *Id.* at 9.

viii. Railroads

To make matters worse, the neighborhood is bordered by rail yards, including a 12-lane railyard 0.3 miles to the west, a much larger 61-lane railyard 0.6 miles to the east, and an enormous 86-lane railyard 1.2 miles to the south. Operations at these rail yards are a significant source of diesel particulate emissions in the surrounding areas. As a result, the Gardens community is trisected by railroad tracks which act as boundaries and barriers in the community. Residents are forced to cross a railroad to enter or exit the neighborhood. One rail yard which is owned by Union Pacific has become a nuisance for residents. The community complains that it is an eyesore and that it has grown as long goes on; at its inception the railroad to be only two tracks wide and now it is eight. The railroad surrounds the neighborhood which causes residents to feel separated from the rest of the City.

The railroad runs through the community but has no drainage system installed. This circumstances has resulted in a dam causing flooding throughout the community specifically an intersection at Sandra Street and Baton Rouge. When it floods, this area floods regularly as the ditches on each side of the tracks back up into the residential communities.

Figure 19: Railroad-Related Flooding in Trinity / Houston Gardens



Moreover, illegal dumping along the railroad is always a problem and Southern Pacific says it is not their responsibility. Specifically, on Shotwell and Shreveport streets, illegal dumping along the rail line is a particular problem.

Trains also blow horns very loudly in the middle of the night at 4:00AM from Lockwood to Homestead after passing all intersections disturbing residents throughout the night. The neighborhood has proposed to put in a Wayside Horn in at the stops and multiple requests for quiet zones remain pending

for this neighborhood, filed over 3 years ago. Near Perry Homes' development, the City already funded quiet zones. However, improvements are still needed at the following intersections:

Requested Quiet Zone Intersections
Bennington & Lockwood
Crosstimbers & Hirsch
Weaver & Shreveport Blvd

The City has been politically unwilling or unable to push quiet zones forward in majority-minority areas claiming opposition of the railroads or lack of funding. Regardless of the reason, the same excuses haven't been impediments in more affluent areas where political will exists.

Further, blocked train crossings continue to overburden these neighborhoods who rely on city streets that intersect rail lines for transportation to work, school, and cultural activities. Traffic blocked at intersections by rail cars parked on the tracks for extended periods slows economic activity in the area, hinders response by first responders and other emergency vehicles like ambulances, and creates unsafe situations for pedestrians, cyclists and desperate motorists at railroad crossings. The risk of injuries or unfortunate accidents increase the longer these intersections are blocked. While federal law controls here, the City has failed to work with the railroad companies at issue to address access or remove these obstructions to commerce and other activities in the area to improve the quality of life for residents disproportionately burdened by this infrastructure than other areas of Houston.

ix. *Vacant, Abandoned and Blighted Properties*

Abandoned buildings with significant fire damage pose another environmental hazard to the neighborhood. Not only are these structures unsafe and often unsecured properties, but also they lead to a decline in property values. The City does not address these structures effectively, and it takes years to get them to get torn down. Many of the buildings have also suffered flooding damage and are in some stage of repairs. The buildings are sometimes boarded up to prevent access, but many stay that way for years. Others remain unprotected, providing potential shelters for vagrants and potential criminal activity.

For example, one Ex. (6), 7(C)
 Ex. (6), 7(C)
 resolve the issue and Ex. (6), 7(C)
 Ex. (6), 7(C) next door.

. It took 2-3 years for the City to
 , subjecting the children Ex. (6), 7(C)

Similarly, there are a large number of vacant lots in the area with no structures that end up very overgrown, harboring rodents and other potential public health hazards in the high grass. One such example is located on Banyan Street and the lots listed below in Table 12:

Table 12: VAB Properties in the Gardens

Street No.	Block/ Intersection	Vacant Lot	Abandoned Structure	Other Blight
5300	Mayle		X	
5201	Tidwell	X		
8014	Peachtree		X	

These types of properties in the neighborhood only attract additional nuisances like illegal dumping as further described in more detail in the next section and listed in Table 13.

b. The Gardens lack of economic development supported by the City's lack of enforcement has spurred neighborhood blight

i. Food Desert

Economic development in the Gardens community is sparse in comparison to the population of the area. Small business such as automotive repair and tire shops and small local shops dominate the area. With only one major grocery store in the area, Fiesta Mart at Kelly and Lockwood, residents are subjected to unhealthy food choices or traveling outside the boundaries of their community. All six of the census tracts in the Gardens neighborhood are designated as food deserts by the USDA's Food Desert Atlas. Food Deserts are defined as census tracts with a low-income population and more than one mile from a grocery store. The only other store is the Super Value Foods at Homestead and Tidwell. Ex. (6), 7(C) Fiesta indicated to residents that Ex. (6), 7(C) in SN48. Even though the Fiesta is in the community, the product selection does not always reflect customer choice or a high-quality selection of fresh food.

Limited access to both healthy and affordable food choices due to the lack of grocery stores and supermarkets impede the residents' ability to achieve a healthy diet. The City's Community Health Profile on the Gardens revealed that the leading cause of death for residents between 1999 and 2004 was heart disease. As of 2014, the City reported that the Gardens had higher proportions of heart diseases and strokes than residents in the City of Houston and Harris County.⁸⁷ As the City itself has stated, "the health of a community depends to a great extent upon the availability and accessibility of its resources," many of which have become unattainable to Gardens residents.⁸⁸ In 2013, Rice University's Houston Community Sustainability report revealed that the Gardens' council district, District B, had the highest percentage of people living within a food desert of all 11 districts.⁸⁹

ii. Vacant Properties and Illegal Dumping

In addition to sparse commercial development, vacant properties are scattered throughout the Gardens residential neighborhood creating gaps in the fabric of the community. Vacant land can be both an opportunity and a constraint providing sites for new development but also encouraging nuisances such

⁸⁷ *Id.* at 23.

⁸⁸ *Id.* at 3.

⁸⁹ <http://www.houstoncommunitysustainability.org/reports/HSINeighborhoodsReportFull.pdf>.

as illegal dumping as discussed in the previous section.⁹⁰ The Garden currently endures high volumes of illegal dumping in the neighborhood, becoming nearly a “hot spot” for trash. The railroad tracks are often target spots for the dumping of heavy items such as household furniture, mattresses, tires, medical waste, Harvey debris, trash, dead bodies, and vandalized ATM machines. On several vacant lots in SN48, abandoned boats are scattered throughout the neighborhood, including addresses in the 8800 block of Hirsch, on Sandra St., on Peachtree, on Weaver, and on Shreveport. Various pressed wood products containing formaldehyde and construction materials containing asbestos pose additional environmental threats to community health.

Even after making several 311 reports, it can still take 6 to 9 months for the City to pick up this illegally dumped heavy trash. The City claims that there is simply a lack of resources to address the issue. Here is a list of well-known illegal dumping locations in the SN48 area:

Table 13: Illegal Dumping Sites Reported Frequently to 311

Address / Block	Address / Block	Address / Block
5300 Mayle St. @ Polly Houston, Texas 77016	6415 Laura Koppe Rd Houston, Texas 77016	7700 Woodwick St. Houston, Texas 77028
8800 Hirsch Rd Houston, Texas 77016	7100 Peachtree St. Houston, Texas 77028	8600 Woodwick St. Houston, Texas 77028
5200 Block of Mayle St. Between Sandra & Peachtree Houston, Texas 77016	6514 Spaulding St Houston, Texas 77016	8800 Woodwick St. Houston, Texas 77028
6400 Sandra St Houston, Texas 77028	7200 Kilpatrick Blvd Houston, Texas 77028	9100 Woodwick St. Houston, Texas 77028
5206 Shreveport Blvd. Houston, Texas 77028	5521 Westcott St Houston, Texas 77016	8300 Autumn Ln @ Weaver Houston, Texas 77016
5500 Shreveport Blvd Houston, Texas 77028	8900 Shreveport Blvd. Houston, Texas 77028	8200 Darien St. Houston, Texas 77028
9100 Shreveport Blvd Houston, Texas 77028	7700 Ley Rd Houston, Texas 77028	

With a heavy industrial presence overtaking the area, particularly truck tires have become the developer’s decoration while it remains an eyesore for the community. On one occasion, June 20, 2017, Super Neighborhood 48 leadership made a 311 request to the City concerning 90 tires that were dumped at 5218 Mayle Street. At one point, more than 200 tires were dumped at that same location.

Tire stockpiles are an environmental, public safety, and health threat. Because of their shape, scrap tires can hold debris, which creates a breeding and feeding habitat for insects and rodents carrying diseases. Discarded tires are havens for mosquitoes, providing ideal breeding grounds and safe places for hatching larvae. The tire’s design holds water and offers shade, yet the rubber retains warmth, creating a perfect incubation location for mosquito hatching. These insects carry a variety of health-threatening diseases such as dengue fever, West Nile virus, and certain strains of encephalitis.

⁹⁰ *Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48*, Collaborative Community Design Initiative No. 5, Community Design Resource Center, Univ. of Houston, 11 (Special Edition: Harvey ed. 2018).

Scrap tires are also a collection source of dirt, dust, moisture, and mold. Scrap tires have oily chemicals that are flammable, and tire fires create injury hazards. Burning tires also release hazardous chemicals, polycyclic aromatic hydrocarbons, volatile organic compounds, and toxic metals, into the air, water, and soil. Tire fires are difficult to extinguish and are expensive to clean up.

The neighborhood leadership struggles regularly with the District B office for the City in trying to get the City to collect these illegally dumped tires. First, per Ex. (6), 7(C) in Ex. (6), 7(C) refuses to pickup truck tires on regular tire roundups. Further, City government fails to report back to community leaders regarding its prosecution of truck tires dumped illegally even though the tire serial numbers are registered and trackable. These barriers make it harder on the community to get the City to collect illegally dumped truck tires and racing tires on a frequent basis.

Additionally, the heavy presence of abandoned properties furthers the devaluation of the neighborhood and allows an open opportunity for more unwanted facilities. On June 20, 2017, Complainant reported 30 cars parked in a lot across from the Christ Temple Apostolic Church at 6001 Lockwood Drive to the City's 311 line. As of October 2018, Complainant was tracking over 60 salvage yards in the Gardens neighborhood.

Once these sites are identified to the City, it should not always be on the community members to continue to report these common dumping grounds, which are plentiful in Super Neighborhood. These are "repeat offender" sites. Instead of the the City taking affirmative action to deter illegal dumping in these areas, by using camera systems, post signage, more frequent patrolling and reporting, regular neighborhood sweeps, organizing community outreach efforts on reporting, levying heavier fines, or other similar enforcement efforts, the City puts the onus on the community to report, and wait, and wait, and wait for some action through the broken 311 system. This issue must be addressed by the City. Better solutions need to be found.

iii. Lack of Parks and Recreational Spaces

The Gardens neighborhoods have nine public parks operated by the City of Houston. While there are several number of parks, three of the parks, Darien Park, Banyan-Camway Triangle, and Apache-Elbert Triangle, are very small, measuring less than one acre. Of the nine parks in the area, only one has been updated by the City. In 2018, the City renovated Busby Park using a \$1.6 million matching grant from the State of Texas. The community voiced concern over the amount of money being spent on one park wanting to spread the money to improve the number of parks in the area. However, they were notified by the City that this was not possible. All nine parks in the community are designated for "general use" by the City but lack basic key features to make them both accessible and beneficial to the community. Due to the missing key features such as park signs identifying rules, benches, or any type of park and playground equipment, these parks have merely become simply stripes or blocks of land. Without park lights and restrooms, residents are limited in the amount of time and time of day they can visit these parks. Many parks are missing the needed infrastructure such as sidewalks and parking needed for residents to even access these areas.

The Gardens are in Park Sector 4 as delineated by the City's Parks and Recreation Department ("Houston PARD"). In the Parks Master Plan Phase II document for Park Sector 4 issued in December 2015, Houston PARD recognized that Trinity Gardens Park, Gleason Park, Greens Bayou Park, Jasper

“Smokey” Frank Park, and Trotter (J.T.) Park had the highest need for redevelopment.⁹¹ Only one of these five parks, Trinity Gardens Park, is in Super Neighborhood 48. SN48 does not dispute that Trinity Gardens Park needs redevelopment, but it is one of many in the area.

iv. *Educational Institutions*

The Gardens has six public schools, McGowen Elementary (formerly Houston Gardens Elementary), Cook Jr. Elementary, Scarborough Elementary, Hillard Elementary, Francis Scott Key Middle School, and Kashmere High School. All six schools are a part of the Houston Independent School District (“HISD”) and are attended by children of the neighborhood. HISD was created in 1923 after the Texas Legislature voted to separate the city’s schools from its municipal government.⁹² Shortly after HISD’s creation, a state law passed in 1925 under the Texas Education Code making racially separate schools mandatory by law, despite the fact that schools were already segregated.⁹³ Notwithstanding the Supreme Court’s ruling in *Brown vs. Board of Education* establishing separate but equal schools for Black and White students to be unconstitutional, HISD remained segregated. Moreover, in 1958 the State of Texas passed an education statute stating that no child was compelled to attend schools that were racially mixed.⁹⁴ Unsurprisingly, HISD remained the most segregated school system in the country until 1960.⁹⁵

In the years following desegregation, residential segregation continued to increase dramatically changing the demographics in the community and throughout HISD. Schools that were 90% White in the 1970s became 90% Black by the ‘80s.⁹⁶ During the construction of Kashmere High school, the neighborhood was a predominately white community.⁹⁷ However, as a result of “white flight” as Blacks began to move into the neighborhood, whites rushed to move out.⁹⁸ As a result, the district redrew its boundaries to include the Black community, allowing students from Wheatly and Booker T. Washington to attend.⁹⁹ In 1968, a new school was built to implement integration practices in HISD schools taking Black, Hispanic and White students from surrounding neighborhoods.¹⁰⁰ However, when the doors opened in 1968, only Black students registered.¹⁰¹ The new school would become Kashmere High School leaving the old high school site to be renamed Francis Scott Key Middle School.¹⁰²

The “white flight phenomenon” created a concentration of Blacks in the Gardens community resulting in neighborhood schools that were predominately Black and Hispanic, causing de facto

⁹¹ HPARD 2015 Master Plan, Park Sector 4 Summary at 90, https://www.houstontx.gov/parks/pdfs/2015/2015MasterPlan_Sector4.pdf

⁹² Gammel, Hans Peter Mareus Neilsen. *The Laws of Texas, 1923-1925* [Volume 22], book, 1925; Austin, Texas. (texashistory.unt.edu/ark:/67531/metapth15500/: accessed December 13, 2018), University of North Texas Libraries, The Portal to Texas History, texashistory.unt.edu.

⁹³ *Texas Jim Crow, Jim Crow Laws: Texas Close*, https://www.bringinghistoryhome.org/assets/bringinghistoryhome/3rd-grade/unit-2/activity-5/3_Texas_Jim%20Crow.pdf

⁹⁴ *Id.*

⁹⁵ William Henry Kellar, *Make Haste Slowly: Moderates, Conservatives, and School Desegregation in Houston*, Texas A&M Press (1999)

⁹⁶ *Ross v. Houston Independent School District*, 699 F. 2d 218, (1983). <https://openjurist.org/699/f2d/218/ross-v-houston-independent-school-district>

⁹⁷ *Kashmere Senior High School History*, <http://www.kashmereaa.org/history.htm>. Accessed Dec. 13, 2018.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

segregation. As of 2017, nearly 75 percent of black students nationwide attended so-called majority-minority schools, and 38 percent attend schools with a white population of 10 percent or less.¹⁰³ Similar statistics apply to Latino students: 80 percent and 40 percent, respectively.¹⁰⁴ Both Black and Latino students are much more likely than white students to attend a school where 60 percent or more of their classmates are living in poverty, as measured by the percentage of students eligible for free or reduced-price lunch programs.¹⁰⁵

As of 2018, more than 85% of students at all six schools were considered economically disadvantaged, with almost all students at Cook Elementary (96.89%) falling in that category. Five of the six schools received the letter grade F on the annual grading and school ranking of public schools in Texas by the organization Children at Risk in 2018. The annual Children at Risk rankings illustrate how Texas public schools performed on state standardized tests for math and reading accounting for the demographics of each school's student population. At Kashmere High School, the only high school in SN48 boundaries, a startling 11.4% of students met their grade level in 2018, implicating that only 11.4% of students understood the material and are prepared for the next grade level.¹⁰⁶ The 2018 Children at Risk rankings highlight a continuing performance gap between wealthier and lower-income schools across the Houston area's 87 districts.

HISD has also closed several public schools in the area, limiting educational opportunities. Chatham Elementary School, located at 8110 Bertwood Street in SN48 was closed by HISD in 2007. Before it closed, the school served 198 students in grades Prekindergarten-5 and had a higher student to teacher ratio of 18:1 than the Texas state level of 15:1. The school building is now used as office space for HISD administration. Similarly, in May 2001, HISD closed Terrell Middle School at 4610 East Crosstimbers. It now serves the HISD Junior Reserve Officer Training Corps headquarters.

At one point, SN48 had five libraries. Three libraries flooded during Harvey and needed substantial repairs. Eighteen months after the storm, only one library is open, the Amanda Dixon Library n/k/a TECHLink Dixon at 8000 Hirsch. Scenic Woods Regional Library at 10677 Homestead Road is the only other operational library nearby.

c. Lack of Response to the Gardens' Request for City Services

Houston's 311 Service allows city residents to report a range of issues such as trash pickup, broken stoplights, potholes, illegal dumpsites, nuisances, bandit signs, and animal control. Despite the volume of calls from Gardens residents, the Gardens community has not received much City response. Residents also realized in 2017 that the interface between the city's 311 system and it's "SeeClickFix" system immensely flawed not working properly. For example, any time Complaints would make a request on the "SeeClickFix" application on their phones—as the city encouraged them to do—the request would not show up in the 311 database. Complainants called the 311 operators to check the status of requests, only to find out that their reference numbers for her requests did not appear in the system.

¹⁰³ Beverly Daniel Tatum, *Segregation worse in schools 60 years after Brown v. Board of Education*, The Seattle Times, Sept. 14, 2017, <https://www.seattletimes.com/opinion/segregation-worse-in-schools-60-years-after-brown-v-board-of-education/>

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

Residents became aware that the city's two systems were not connecting on the back-end like they should, reporting this issue to 311 supervisors at a community meeting. Shortly after, while out in the neighborhood, the same individual encountered a city government employee who told her "I know who you are. They're having meetings about you over at 311." Soon after, the disconnect between the two systems appeared to be fixed. Now that the City has launched its CRIS platform in June 2021, the problems with making 311 reports have unbelievably gotten even worse. Moreover, SN48's reporting and complaint history apparently was deleted from the system, giving the City a "clean slate" without remediating known, existing issues.

Problems like the illegal dumping and vacant properties become exacerbated through the City's denial of city trash services through its delayed or lack thereof response to illegal dumping issues. Far too often, the City's response time if at all appears to be based on race and the neighborhood. When the aforementioned Trinity Garden apartment complex caught on fire during the construction of the playground, the owner did nothing to protect the burned-out structure leaving it exposed for years subjecting local school-age children to safety hazards. Residents recalled that it took over two to three years to resolve and for the City to force the owner to make the necessary repairs.

d. Retaliatory Actions Taken By City

Title VI also supports retaliation claims.¹⁰⁷ Retaliation is "an intentional act in response to a protected action."¹⁰⁸ Most federal grant-making agencies have included anti-retaliation provision in their Title VI regulations, including DHS,¹⁰⁹ DOC,¹¹⁰ EPA,¹¹¹ and HUD.¹¹² Title VI does not grant recipients a license to threaten individuals or prevent them from bringing disparate impact complaints to the government, which has the ability to pursue disparate impact claims in court and in the administrative process.

As mentioned above, some 311 requests to the City concerning illegal dumping have sparked retaliatory acts towards residents by the City, forming the basis of this complaint. Specifically, in late 2016, the president of the Houston Gardens Civic Association made a complaint to the city about a missed trash pick-up. After she made this complaint, the City came out and "red-tagged" every house on the block of Banyan Street, except for the house of the person who made the complaint. The city issued citations to every house for extremely minor violations, such as having the trash can outside the gate. This retaliatory act is just one instance of the ongoing intentional discriminatory actions taken towards residents.

e. Hurricane Harvey Response

Hurricane Harvey struck Houston on August 27, 2017, dropping 47.4" of rainfall, leaving over 150,000 homes flooded and causing over 125 billion dollars in damage, making it the second most costly hurricane to hit the U.S. mainland since 1900. Similar to other minority communities the storm only exacerbated pre-existing issues such as drainage, illegal dumping and vacant properties in the Gardens

¹⁰⁷ See e.g., *Peters v. Jenney*, 327 F.3d 307, 318 (4th Cir. 2003); *Chandomari v. Georgetown Univ.*, 274 F. Supp. 2d 71, 83 (D.D.C. 2003).

¹⁰⁸ *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005).

¹⁰⁹ 6 C.F.R. § 21.11(e) (2003).

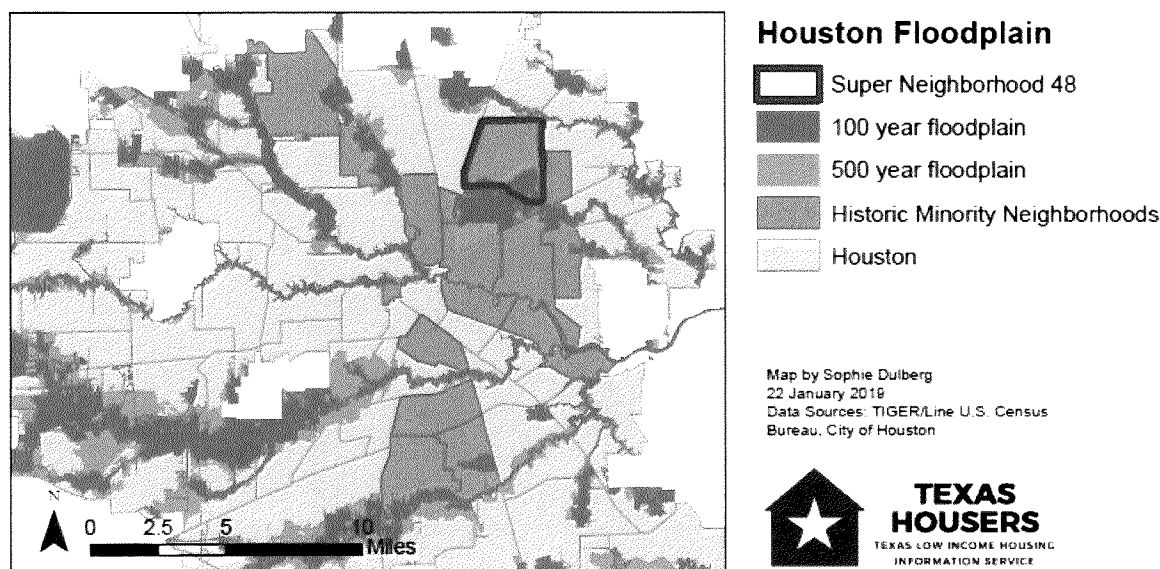
¹¹⁰ 15 C.F.R. § 8.9(a) (1973).

¹¹¹ 40 C.F.R. § 7.100 (1984).

¹¹² 24 C.F.R. § 1.7(e) (1973).

area. FEMA flood hazard maps illustrate the substantial flooding risk for the Gardens community given the southern part of the neighborhood's proximity to Huntington Bayou. The City reports that both neighborhoods bordering Huntington Bayou suffered great property losses, with at least 3,954 homes flooded in Trinity Gardens and 3,672 homes flooded in Kashmere Gardens.¹¹³ This number accounts for over half, 54% of the Trinity / Houston Gardens neighborhood. Harris County Flood Control District estimated 36% of flooded homes across the county were covered by flood insurance policies while 64% were not.¹¹⁴

Figure 20: Floodplains in Super Neighborhood 48 Compared to Other Minority Neighborhoods



Recovery for the Gardens from Harvey has been slow. Some houses still have construction debris present on the streets as families are still working to “gut out” the water-damaged homes but lacked the resources to start construction earlier. Many houses in the Rosewood neighborhood, where there is open ditch drainage, remain completely boarded up or are in various states of disrepair. Vacant houses with significant storm damage are on almost every street and outnumber those that are still under construction. Forty percent of FEMA claims in the neighborhood were denied. Many residents did not bother to initiate appeals, believing them to be a waste of time.

Buyouts in this area have happened in a checkerboard pattern after Ike, Harvey and Allison. Areas that are frequently flooded include Mylie St., which is adjacent to the detention pond under construction between Kirkpatrick Blvd and Homestead.

After Ike, the blue tarp program failed to fully assist the neighborhood despite the community's need, and the City ended up returning almost \$50 million to the federal government. Unfortunately, the programs offered by the City as part of the recovery process were not actually pushed out to the people,

¹¹³ Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48, Collaborative Community Design Initiative No. 5, Community Design Resource Center, Univ. of Houston, 13 (Special Edition: Harvey ed. 2018).

¹¹⁴ Id.

resulting in money going back to the federal government despite the need in the community. Community leaders fear the same scenarios are likely to result after Harvey.

Polled one year after Harvey, 41% of black residents did not feel that there was appropriate recovery from Harvey. One in five residents reported disruption in their household due to Hurricane Harvey. These responses were higher for low-income residents and higher for African-American households.

f. Cancer Cluster Research

In March 2020, the Texas Department of State Health Services published a study evaluating the occurrence of cancer across 21 census tracts in Houston, Texas. The State's investigation surveyed data related to nine types of cancer over 17 years. A cancer cluster is defined by the Center for Disease Control and Prevention and the Council of State and Territorial Epidemiologists "as a greater than expected number of cancer cases that occurs within a group of people in a geographic area over a defined period of time."¹¹⁵ This Texas study found that the rates of acute myeloid leukemia, esophagus, larynx, liver, and lung and bronchus cancers were "statistically significantly greater than expected based on cancer rates in Texas."¹¹⁶ And the study cited cancer clusters in Trinity / Houston Gardens, specifically liver cancer and adult lung and bronchus cancer, were statistically greater than expected in census tract 2302—a census tract in Trinity / Houston Gardens.¹¹⁷

g. COVID Impacts

According to the CDC, older community members with underlying health conditions and without access to resources are among the most significantly impacted by COVID.¹¹⁸ In fact eight out of 10 deaths in the United States from COVID-19 are those 65 and older who contract the illness.¹¹⁹ The Gardens' neighborhood has a high concentration of adults over the age of 65 with disabilities, self-care difficulty, and independent living difficulty are almost twice that of the rest of Texas, respectively: 50.7% (compared with 38%); 17.5% (compared with 9.1%); and 26.9% (compared with 15.9%).¹²⁰ These adults over 65 living in the Gardens are an extremely at-risk population.

Below are the number of COVID-19 cases for those individuals living the Trinity / Houston Gardens area by ZIP code:

- 77016: 503 cases (as of July 27, 2020)
- 77026: 498 cases (as of July 27, 2020)
- 77028: 366 cases (as of July 27, 2020)

¹¹⁵ *Id.* at 2.

¹¹⁶ Texas Department of State Health Services, Assessment of the Occurrence of Cancer Houston, Texas 2000-2016, (March 20, 2020) at 4

¹¹⁷ *Id.* At 5.

¹¹⁸ Center for Disease Control and Prevention, People Who Are at Increased Risk for Severe Illness, (27 July 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>

¹¹⁹ Center for Disease Control and Prevention, Your Health. Older Adults, (27 July 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>

¹²⁰ *Id.*

Adding to the risk posed due to the seniority of the Trinity / Houston Gardens community, the neighborhood is without resources. Per capita income in Trinity / Houston Gardens is \$16,988 for 2014-2018 as compared to the rest of Texas whose per capita income was \$30,143 for the same four-year time period.¹²¹ Further the children and families living below poverty level are significantly higher than state averages. Children living below the poverty level make up 35.9% while in the State of Texas only 22% in live below the poverty level, and families living below the poverty level are 21.4% compared with 11.9% at a state level.¹²²

As widely reported throughout the pandemic, COVID further replicates and exacerbates these existing disparities in this socially vulnerable community like Trinity / Houston Gardens in the same way that flooding impacts from Harvey and other extreme weather events do. The same social vulnerabilities play out again and again with each new disaster to the detriment of Gardens residents.

h. Physical Health Determinants

Other physical determinants of health are at issue in the Trinity / Houston Gardens community. For instance, 20.8% percent of homes in this community were built before 1950 making this community at risk for exposure to hazardous environmental toxins in their homes like lead and asbestos.¹²³ The average percentage of homes across the state of Texas built before 1950 is only 7.1%.¹²⁴ Because homes built before 1950 have not undergone updates, those homes may contain lead-based paint. Lead-based paint was not banned until 1977 and can lead to nervous system damage and stunted growth, as well as developmental delays. Research has shown that low-income, minority communities have a disparate risk of lead exposure through ingestion or inhalation of lead-based paint, dirt, or fumes compared to more affluent populations.¹²⁵ Additionally, asbestos insulation was also used in homes built before 1950 and asbestos is known to trigger cancer, among other health problems.¹²⁶ These existing health hazards in the community housing stock further contribute to the poor quality of health and reduced life expectancy in the area noted earlier.

i. Mold

Houston residents whose homes flooded during Hurricane Harvey are at greater risk for lung dysfunction resulting from mold exposure in their homes.¹²⁷ According to the Center for Disease Control and Prevention (“CDC”), mold can cause an array of health effects including: stuffy nose, sore throat, coughing or wheezing, burning eyes, or skin rash.¹²⁸ And those suffering from asthma or a mold allergy

¹²¹ Houston State of Health, Informing Action with Data. Data for Trinity / Houston Gardens neighborhood. (27 July 2020), <http://www.houstonstateofhealth.com/indicators/index/dashboard?module=indicators&controller=index&action=dashboard&id=83016860560532138&card=0&localeId=286555>

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Sansom, Garrett et al. “Vulnerable Populations Exposed to Lead-Contaminated Drinking Water within Houston Ship Channel Communities.” *International journal of environmental research and public health* vol. 16,15 2745. 1 Aug. 2019, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6695821/>

¹²⁶ ¹²⁶ Houston State of Health, Informing Action with Data. Houses Built Prior to 1950. (27 July 2020), <http://www.houstonstateofhealth.com/indicators/index/view?indicatorId=282&localeId=286555>

¹²⁷ Ben Hirsch. Coronavirus puts those living in flood-damaged homes at greater risk. (March 31, 2020), <https://kinder.rice.edu/urbanedge/2020/03/31/coronavirus-puts-those-living-flood-damaged-homes-greater-risk>

¹²⁸ Centers for Disease Control and Prevention. Mold, (27 July 20) <https://www.cdc.gov/mold/default.htm>

can experience severe reactions.¹²⁹ Further, those individuals who are immune-compromised or have chronic lung disease may develop lung infections after mold exposure.¹³⁰ In a survey conducted one-year after Hurricane Harvey by the Kaiser Family / Episcopal Health Foundation, one key finding was that Black affected residents were continuing to suffer disruptions resulting from Harvey, and these Black residents were additionally unaware that the federal government provided funding to help Texas with long-term recovery and rebuilding.¹³¹ Forty-three percent of Black residents reported major home damage.¹³²

In the Trinity / Houston Gardens neighborhood an estimated 4,000 homes within the 6.86 square mile area flooded, ranking it 33 of 143 neighborhoods surveyed in Harris County.¹³³ And according to an article published by the Kinder Institute for Urban Research, many households have still not recovered from Harvey especially those homes belonging to low-income people of color.¹³⁴ The City of Houston Housing and Community Development Department created a data project which classified Trinity / Houston Gardens as most at risk from not recovering from Harvey.¹³⁵ The Trinity / Houston Gardens neighborhood not only suffered severe damage from Harvey, but the impact was compounded by the community's Social Vulnerability Index (SVI).¹³⁶ This study gave Trinity / Houston Gardens a high-risk ranking because it ranks within 20% of the SVI, average damages to home of more than 50% of the median household incomes, and over 40% of the residential buildings in the community were damaged.¹³⁷

Further, HUD's process to evaluate need is flawed. For instance, the number of individual applications for assistance filed with FEMA dictates how HUD determines serious unmet housing needs. But, one, these FEMA applications are completed through FEMA's website which can be an obstacle for those lacking resources, and, two, the application process is lengthy and "bureaucratic."¹³⁸ As a result this application process often "disproportionately rejects people of color and lower socioeconomic status or forces them through a lengthy and complicated appeals process."¹³⁹ And more, several things can go wrong during the FEMA application process: (1) a FEMA inspector may not be able to fully appreciate a property's damage during the mandatory 30-minute inspection, (2) when property is deemed to be a lower monetary value or in disrepair due to pre-Harvey factors may be assess at a value too low for the home to meet threshold requirements for qualification.¹⁴⁰ All of this culminates in a disproportionate impact on communities of color because those communities are systematically prevented from receiving significant

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ Liz Hamel, et al. One Year After the Storm: Texas Gulf Coast Residents' Views and Experiences with Hurricane Harvey Recovery. (August 2018), https://www.episcopalhealth.org/wp-content/uploads/2020/01/EHFKFF_Hurricane_Harvey_anniversary_survey_report.pdf

¹³² *Id.*

¹³³ Rice|Kinder Institute for Urban Research. HCDC Dashboard, Trinity / Houston Gardens (27 July 2020), www.datahouston.org/neighborhood/K047.html

¹³⁴ Ben Hirsch. Coronavirus puts those living in flood-damaged homes at greater risk. (March 31, 2020), <https://kinder.rice.edu/urbanedge/2020/03/31/coronavirus-puts-those-living-flood-damaged-homes-greater-risk>

¹³⁵ The Harvey Data Project: City of Houston Houston Housing and Community Development Department. (March 2019), https://www.civisanalytics.com/wp-content/uploads/2019/03/CityOfHouston_Report_Website-1.pdf at pp. 3-4.

¹³⁶ *Id.* at 7.

¹³⁷ *Id.*

¹³⁸ The Harvey Data Project: City of Houston Houston Housing and Community Development Department. (March 2019), https://www.civisanalytics.com/wp-content/uploads/2019/03/CityOfHouston_Report_Website-1.pdf at 8.

¹³⁹ *Id.* at 9.

¹⁴⁰ *Id.*

benefits or access to resources—and the inequalities are perpetuated.¹⁴¹ Even worse, HUD's long term recovery formulas for assistance then relies on this data that may exclude low income communities of color.¹⁴²

Data from the Trinity / Houston Gardens' ZIP codes showed that this area included twice as many FEMA applicants with verified losses compared with other ZIP codes in Harris County, but only half of these applicants ever received any FEMA assistance.¹⁴³ Because community members in the Trinity / Houston Gardens neighborhood remained unassisted, some were forced to continue living in flooded homes—many until sickness, like severe pneumonia from mold exposure, displaced them to live in cars or trailers alongside their un-remediated residence.¹⁴⁴ Still others who were displaced ended up in flooded rentals and then suffered nose bleeds and headaches.¹⁴⁵ And two years after Harvey, residents of the Trinity / Houston Gardens community were still wait-listed to receive assistance from the City of Houston Harvey relief program, which received billions in Federal financial assistance.¹⁴⁶ Five ZIP codes in this area have the most need for continued assistance, including 77028, 77026, 77016, 77093, and 77078.

The African-American families that they make up the Trinity / Houston Gardens neighborhood are among those greatly impacted from mold that resulted from Hurricane Harvey for a variety of reasons. After Harvey, access to government aid and charity assistance was granted unequally, and disproportionately impacted populations additionally had greater difficulty acquiring these resources.¹⁴⁷ And the magnitude of destruction after Harvey was amplified in communities like Trinity-Gardens Houston because this area was already suffering from systemic disparate access to resources.¹⁴⁸

j. Winter Storm Uri

In February 2021, City of Houston and the entire State of Texas was impacted by Winter Storm Uri. As noted above, there was a long list of people impacted by Harvey that were still recovering who are now having residual impacts from Hurricane Harvey as well. These socially vulnerable residents are recovering slowly because they do not have homeowners' insurance. Pipes broke, and the owner does not have the resources to fix them. None of the money raised by the City in response to the storm has reached the ground, nor is it being provided directly to help people. At most, it is piecemeal funding. Possibly sufficient to fix the plumbing but not the resulting damage to walls, ceiling or other structural damage. Plumbers and plumbing equipment were in short supply immediately after the storm, and this community continues to feel those shortages. The City simply is not good at getting information about its social support programs out to the community in order to spend funding it receives.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ Laura Purser. Kashmere and Trinity Gardens One Year After Harvey: A Follow-Up Report. (August 24, 2018), <https://www.ricedesignalliance.org/kashmere-and-trinity-gardens-one-year-after-harvey-a-follow-up-report-by-lara-purser>

¹⁴⁴ Shelley Childers. 75-year-old Harvey victim still living in trailer 2 years later. (July 19, 2019), <https://abc13.com/hurricane-harvey-relief-funds-home-damage/5386565/>

¹⁴⁵ Laura Purser. Kashmere and Trinity Gardens One Year After Harvey: A Follow-Up Report. (August 24, 2018), <https://www.ricedesignalliance.org/kashmere-and-trinity-gardens-one-year-after-harvey-a-follow-up-report-by-lara-purser>

¹⁴⁶ Ex. (6), 7(C) Harvey victim still living in trailer 2 years later. (July 19, 2019), <https://abc13.com/hurricane-harvey-relief-funds-home-damage/5386565/>

¹⁴⁷ Manny Fernandez. A year after Hurricane Harvey, Houston's poorest neighborhoods are the slowest to recover. (Sept. 3, 2018), <https://www.nytimes.com/2018/09/03/us/hurricane-harvey-houston.html>

¹⁴⁸ *Id.*

IV. LEGAL BACKGROUND

A. RECIPIENTS MUST COMPLY WITH TITLE VI AND ANY RELATED IMPLEMENTING REGULATIONS

1. Department of Housing and Urban Development

HUD regulations implementing Title VI state that “[n]o person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits or, or otherwise be subject to discrimination under, any program to which this part applies.” 24 C.F.R. § 1.4(a) (1973). These regulations also include the following prohibitions of specific discriminatory acts by recipients of federal funds:

- (i) Deny a person any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;
- (ii) Provide any housing, accommodations, facilities, services, financial aid, or other benefits to a person which are different, or are provided in a different manner, from those provided to others under the program or activity;
- (iii) Subject a person to segregation or separate treatment in any matter related to his receipt of housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity;
- (iv) Restrict a person in any way in access to such housing, accommodations, facilities, services, financial aid, or other benefits, or in the enjoyment of any advantage or privilege enjoyed by others in connection with such housing, accommodations, facilities, services, financial aid, or other benefits under the program or activity; or
- (v) Treat a person differently from others in determining whether he satisfies any occupancy, admission, enrollment, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any housing, accommodations, facilities, services, financial aid, or other benefits provided under the program or activity;

24 C.F.R. § 1.4(b)(i-v) (1973).

2. Department of Homeland Security

Department of Homeland Security regulations implementing Title VI also state that “[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving DHS assistance on the basis of race, color, national origin[.]” 6 C.F.R. § 21.5(a) (2003). These regulations also provide a non-exclusive list of specific, prohibited discriminatory acts:

- (i) Deny a person any service, financial aid, or other benefit provided under the program;
- (ii) Provide any service, financial aid, or other benefit to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate treatment in any matter related to his receipt of any service, financial aid, or other benefit under the program;

(iv) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program; or

(vi) Deny a person an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program.

6 C.F.R. § 21.5(b) (1) (i)-(vi) (2003).

3. Department of Commerce

Department of Commerce regulations implementing Title VI also state that “[n]o person in the United States shall, on the grounds of race, color or national origin be excluded from participation in, be denied the benefits or, or otherwise be subject to discrimination under, any program to which this part applies.” 15 C.F.R. § 8.4 (1973). These regulations also provide a non-exclusive list of specific, prohibited discriminatory acts:

(i) Deny a person any service, financial aid, or other benefit provided under the program;

(ii) Provides any service, financial aid, or other benefit, to a person which is different, or is provided in a different manner, from that provided to others under the program;

(iii) Subject a person to segregation or separate or other discriminatory treatment in any matter related to his receipt (or non-receipt) of any such service, financial aid, property, or other benefit under the program.

(iv) Restrict a person in any way in the enjoyment of services, facilities, or any other advantage, privilege, property, or benefit provided to others under the programs;

(v) Treat a person differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which persons must meet in order to be provided any service, financial aid, or other benefit provided under the program;

(vi) Deny a person an opportunity to participate in the program through the provision of property or services or otherwise, or affords him an opportunity to do so which is different from that afforded others under the program (including the opportunity to participate in the program as an employee but only to the extent set forth in paragraph (c) of this section);

(vii) Deny a person the same opportunity or consideration given others to be selected or retained or otherwise to participate as a contractor, subcontractor, or subgrantee;

(viii) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program.

15 C.F.R. § 8.4(a) (1973).

4. Environmental Protection Agency

EPA regulations implementing Title VI state that “[n]o person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or on the basis of sex in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act, as amended, including the Environmental Financing Act of 1972.” 40 C.F.R. § 7.30 (1984). The EPA’s adopted regulations also provide a non-exclusive list of specific, prohibited discriminatory acts whether performed directly or through contractual, licensing, or other arrangements:

(1) Deny a person any service, aid or another benefit of the program or activity;

(2) Provide a person any service, aid or other benefit that is different, or is provided differently from that provided to others under the program or activity;

(3) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program or activity;

(4) Subject a person to segregation in any manner or separate treatment in any way related to receiving services or benefits under the program or activity;

(5) Deny a person or any group of persons the opportunity to participate as members of any planning or advisory body which is an integral part of the program or activity, such as a local sanitation board or sewer authority;

(6) Discriminate in employment on the basis of sex in any program or activity subject to section 13, or on the basis of race, color, or national origin in any program or activity whose purpose is to create employment; or, by means of employment discrimination, deny intended beneficiaries the benefits of EPA assistance, or subject the beneficiaries to prohibited discrimination.

(7) In administering a program or activity receiving Federal financial assistance in which the recipient has previously discriminated on the basis of race, color, sex, or national origin, the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.

40 C.F.R. § 7.35(a)(1)-(7) (2003).

Moreover, a recipient shall not use criteria or methods of administering its program or activity which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, or sex. 40 C.F.R. § 7.35(b) (2003). Similarly, a recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program or activity to which this part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart. 40 C.F.R. § 7.35(c) (2003).

Further, each of the implementing regulations governing HUD, DHS, DOC, and EPA make clear that discrimination on the basis of race is a violation of Title VI whether it is the purpose of the decision or its effect. 24 C.F.R. § 1.4(b)(3) (1973); 6 C.F.R. § 21.5(d) (2003); 15 C.F.R. § 8.4(3) (1974); 40 C.F.R. § 7.35(c) (2003).

V. VIOLATIONS OF TITLE VI

Super Neighborhood 48 identifies the following civil rights violations by the City of Houston that have disparately impacted residents in the super neighborhood's boundaries due to the lack of the City's investment in the area and prioritization of City resources to whiter, more affluent areas in the City.

A. DISCRIMINATORY ACTS

The City of Houston has intentionally engaged in conduct devoid of its federal responsibilities and adherence to the law at the loss of Gardens' residents and families for over a decade. Specifically, the City has failed to provide equal protection to the Gardens community by providing inadequate drainage infrastructure, subjecting the Gardens to persistent flooding events with little to no mitigation thereafter. Moreover, the City has intentionally positioned industrial activities such as batch plants, landfills and Superfunds sites in the Gardens neighborhood at a disproportionate rate in comparison to whiter affluent neighborhoods, contributing to overall neighborhood blight and creating a persistent health hazard for residents. The City continues to respond to requested City services, such as trash removal, illegal dumping and other code enforcement requests made by Gardens residents at a much lower rate in comparison to whiter, more affluent neighborhoods, resulting in great disparities in municipal services. These actions preyed upon the entire Gardens community who are predominately minorities in a low-income community.

Furthermore, the minority communities in Houston have traditionally been left underserved and remain abandoned today. From schools to public facilities to public safety to healthy environments, the unequal distribution of and access to resources and opportunities is due to discrimination and residential segregation.¹⁴⁹ In the past, Houston's communities of color continue to be legally denied basic municipal services like street lights and drainage and amenities like parks and up-to-date educational services.¹⁵⁰ Despite the supposed eradication of Jim Crow Laws throughout the United States, residents of the Gardens

¹⁴⁹ Elizabeth K. Julian, Ann Lott, Demetria McCain, Chrishelle Palay, *Why Houston Remains Segregated*, HOUSTON CHRONICLE, (FEB. 16, 2017), [HTTPS://WWW.HOUSTONCHRONICLE.COM/LOCAL/GRAY-MATTERS/ARTICLE/WHY-HOUSTON-REMAINS-SEGREGATED-10935311.PHP](https://www.houstonchronicle.com/local/gray-matters/article/WHY-HOUSTON-REMAINS-SEGREGATED-10935311.PHP).

¹⁵⁰ *Id.*

are being denied these same basic services, amenities, features, and key infrastructure today. This disinvestment and neglect has led to communities like the Gardens being unjustifiably burdened by the City's failing schools, environmental hazards, crumbling infrastructure and ultimately disinvestment.

The Supreme Court has established “an implied private right of action” under Title VI, leaving it “beyond dispute that private individuals may sue” to address allegations of intentional discrimination.¹⁵¹ The Court previously has stated that it had “no doubt that Congress ... understood Title VI as authorizing an implied private cause of action for victims of illegal discrimination.”¹⁵² In *Sandoval*, the Supreme Court explained that the private right of action under Title VI exists only under Section 601 for cases of intentional discrimination.¹⁵³

Generally, intentional discrimination occurs when the recipient acted, at least in part, because of the actual or perceived race, color, or national origin of the alleged victims of discriminatory treatment.¹⁵⁴ While discriminatory intent need not be the only motive, a violation occurs when the evidence shows that the entity adopted a policy at issue “‘because of,’ not merely ‘in spite of,’ its adverse effects upon an identifiable group.”¹⁵⁵ The Supreme Court in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989), and *Adarand Constructors, Inc., v. Peña*, 515 U.S. 200, 226 (1995), established that any intentional use of race, whether for malicious or benign motives, is subject to the most careful judicial scrutiny. Accordingly, the record need not contain evidence of “bad faith, ill will or any evil motive on the part of the [recipient].”¹⁵⁶ Direct evidence of discriminatory intent is evidence that “if believed, proves the fact [of discriminatory intent] without inference or presumption.”¹⁵⁷

Many cases of intentional discrimination are not proven by a single type of evidence. Rather, many different kinds of evidence— direct and circumstantial, statistical and anecdotal— are relevant to the showing of intent and should be assessed on a cumulative basis. *Arlington Heights* and its progeny set forth a variety of factors probative of intent to discriminate.¹⁵⁸ Under this method of proving intent, the court or investigating agency analyzes whether discriminatory purpose motivated a recipient's actions by examining factors such as statistics demonstrating a “clear pattern unexplainable on grounds other than” discriminatory ones; “[T]he historical background of the decision”; “[T]he specific sequence of events leading up to the challenged decision”; the defendant's departures from its normal procedures or substantive conclusions, and the relevant “legislative or administrative history.”¹⁵⁹ When a recipient applies different procedural processes or substantive standards to requests of minorities and non-minorities, the use of such different processes or standards, when a non-minority receives more favorable treatment, may raise an inference of discriminatory intent. “These factors are non-exhaustive.”¹⁶⁰

¹⁵¹ *Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (quoting *Sandoval*, 532 U.S. at 280).

¹⁵² *Cannon v. Univ. of Chicago*, 441 U.S. 677, 703 (1979) (holding that an individual has a private right of action under Title IX).

¹⁵³ 532 U.S. at 284-85.

¹⁵⁴ *Doe ex rel. Doe v. Lower Merion Sch. Dist.*, 665 F.3d 524, 548 (3d Cir. 2011).

¹⁵⁵ *Pers. Adm'r of Mass. v. Feeney*, 442 U.S. 256, 279 (1979).

¹⁵⁶ *Williams v. City of Dothan*, 745 F.2d 1406, 1414 (11th Cir. 1984).

¹⁵⁷ *Coghlan v. Am. Seafoods Co.*, 413 F.3d 1090, 1095 (9th Cir. 2005) (citation omitted).

¹⁵⁸ *Village of Arlington Heights v. Metro. Housing Dev. Corp.*, 429 U.S. 252, 266-68 (1977).

¹⁵⁹ *Faith Action for Cmty. Equity v. Hawai'i*, No. Civ. 13-00450 SOM, 2015 WL 751134, at *7 (D. Haw. Feb. 23, 2015) (Title VI case citing *Pac. Shores Props., LLC v. City of Newport Beach*, 730 F.3d 1142, 1158-59 (9th Cir. 2013)); see also *Sylvia Dev. Corp. v. Calvert Cty.*, 48 F.3d 810, 819 (4th Cir. 1995) (adding to the *Arlington Heights* factors evidence of a “consistent pattern” of actions of decision-makers that have a much greater harm on minorities than on non-minorities).

¹⁶⁰ *Pac. Shores Props.*, 730 F.3d at 1159.

Moreover, when a plaintiff relies on the *Arlington Heights* method to establish intent, “the plaintiff need provide very little such evidence ... to raise a genuine issue of fact ...; any indication of discriminatory motive ... may suffice to raise a question that can only be resolved by a fact-finder.”¹⁶¹

Critically, *Arlington Heights* directs courts and agencies to engage in a cumulative assessment of the evidence to determine whether invidious discriminatory purpose was a motivating factor.¹⁶² *Arlington Heights* instructs courts and agencies to consider “the impact of the official action” including whether “it bears more heavily on one race than another.”¹⁶³ Accordingly, the discriminatory impact of a facially neutral policy or practice (frequently, but not always, demonstrated through the use of statistics) can be used as part of the evidentiary showing in an intentional discrimination case.¹⁶⁴

1. Impact of the City’s repeated failure to update the drainage infrastructure and/or mitigate flooding damage in the Gardens shows intentional discrimination towards Blacks and Hispanics

The City’s inequitable public investment in drainage infrastructure on the basis of race, color and national origin are direct violations of the Title VI Civil Rights Act. The City’s efforts to wholly concentrate updated underground drainage infrastructure in whiter more affluent areas, while failing to improve predominately minority communities who experience repeated flooding, such as Trinity / Houston Gardens, evidence intentional racial discrimination. The City has repeatedly failed to provide equal levels of flood protection to African-American- and Hispanic-segregated neighborhoods harming people of color directly, by decreasing the economic value of their homes and subjecting them to disproportional exposure to hazards from flooding. These hazards include disproportionate exposure to the Zika virus transmitted by mosquitos that breed in standing water in open drainage ditches and exposure to sewage and chemicals from industrial areas.

The City’s failure to give priority to underserved communities severely affected by flooding with limited resources, continue to perpetuate the cycle of inequitable distribution triggering disinvestment and neighborhood blight overtime. Neighborhoods environmental hazards in their community, if left unmitigated, will likely remain lower income, more racially segregated neighborhoods. Point source pollution, floodplains and lack of proper infrastructure keeps these communities poor by discouraging private investment and eroding property values of residents who have invested in the community.

The City’s primary avenues for infrastructure improvements, TIRZ, Rebuild Houston n/k/a Build Houston Forward, and yearly designated Capital Improvement Projects are consistently distributed in an inequitable manner more favorable to non-minority neighborhoods than minority neighborhoods. The fiscal year 2019-2023 Capital Improvement Project Plan includes \$583 million for Storm Water Drainage Improvements. However, the City’s current Capital Improvement Project plans for the next five years,

¹⁶¹ *Id.*

¹⁶² 429 U.S. at 266

¹⁶³ 429 U.S. at 266 (citations and quotations omitted).

¹⁶⁴ See *Melendres v. Arpaio*, 989 F. Supp. 2d 822, 902 (D. Ariz. 2013) (awarding injunctive relief to Title VI plaintiffs and finding that plaintiffs demonstrated “racially disparate results” and “additional indicia of discriminatory intent”) (citing *Feeney*, 442 U.S. at 272); see also *Arlington Heights*, 429 U.S. at 264–66; *Comm. Concerning Cmty. Improvement v. City of Modesto*, 583 F.3d 690 (9th Cir. 2009) (Title VI and equal protection case finding that statistical evidence was sufficient to create inference of intent where race-neutral precondition to receiving municipal services served to exclude Latino-majority neighborhoods).

2018-2022, do not include any improvements for the Trinity / Houston Gardens area, despite the great need for improvement as evidenced by the situations of repetitive funding. Currently, the City has one storm project slated to take place in District B, in Pinewood Village, which will provide no flood mitigation for Trinity / Houston Gardens residents. This discriminatory allocation supports the notion made by Gardens residents and many minority communities, “While natural disasters are equal opportunity events, the resources to recover are not.”¹⁶⁵

Maps of flood risk posed by natural flood plains compared to areas of repetitive flooding in Trinity / Houston Gardens demonstrate that this area floods primarily not due to natural geography but because the as-built infrastructure is failing the community. Specifically, the road and rail obstructions described above are the source of much of the street flooding in the area. Thus, traditional ways to address flooding within Harris County, through the Harris County Flood Control District (“HCFCD”), are not working for the Gardens. HCFCD shoulders much of the financial and planning burden for remediating flooding within the County. Because of the flood plains, HCFCD does not and should own this problem. Instead, the City needs to take ownership of how its failure to upgrade basic infrastructure in neighborhoods like the Gardens as well as failure to enforce regulations and construction requirements contribute to the primary flooding concerns in this area.

2. The City’s historical pattern of placement of hazardous industrial and commercial facilities in the Gardens despite little economic development in the Gardens shows intentional discrimination

The City has intentionally discriminated against residents in the Trinity / Houston Gardens neighborhoods through its use of discriminatory land use practices, industrial facility siting, and failure to enforce environmental regulations. The City has historically targeted communities of color, specifically Trinity / Houston Gardens to serve as the site for landfills, garbage dumps and superfunds as evidenced in the concentration of these industrial sites for over 5 decades in predominately minority communities only. As a result members of the community experience not only adverse health and safety impacts but lower property values stripping communities of wealth accrual and access to opportunity.

Studies have shown, across all majority Black neighborhoods owner-occupied homes are undervalued by the real estate market, and consistently sell or are appraised for lower prices, at an average of \$48,000 per home.¹⁶⁶ The average price of a home in Trinity / Houston Gardens is \$68,818, far below the Houston average of \$140,300. This systemic devaluation puts Gardens residents at significant disadvantage when it comes to wealth accrual, making it harder to pay for education, start businesses, and retire. Areas with greater devaluation are more segregated and produce less upward mobility for black children as evidenced by the failing educational institutions in the Gardens.¹⁶⁷ Moreover, devaluation of these assets further penalizes communities, since these businesses often form the tax base that supports and funds local education and infrastructure.

To date, there are nine waste disposal sites owned and operated by the City of Houston. The majority of these facilities are located within predominately African American or Hispanic communities.

¹⁶⁵ Kashmere Gardens Trinity / Houston Gardens Super Neighborhoods 52 and 48, Collaborative Community Design Initiative No. 5, Community Design Resource Center, Univ. of Houston, 13 (Special Edition: Harvey ed. 2018).

¹⁶⁶ <https://www.curbed.com/2018/11/27/18114490/black-homewnership-home-value-neighborhood>

¹⁶⁷

There are over 35 industrial facilities located within the Gardens community alone. This represents clear overrepresentation of one neighborhood hosting of city-owned and private solid waste facility sites. The historical record is clear, African Americans did not move into Trinity / Houston Gardens following garbage dumps and incinerators, yet the waste sites were intentionally placed into established communities of color. The garbage dumps and incinerators followed African Americans into this neighborhood, intentionally placed. As Ex. (6), 7(C) it in a Ex. (6), 7(C) , “Not accidental. Follows path of least resistance.”

3. The City has departed from its standards and procedures through intentional abandonment of city services and amenities fostering neighborhood blight and disinvestment, depriving complainants of their equal right to right to convenience, health and safety on the basis of race

The City’s intentional discrimination is evidenced through the substantial inferiority in quality and quantity of municipal services or facilities provided to the Gardens community. The City acknowledges that “substandard services and lack of amenities like the lack of financial and banking services in a neighborhood can maintain segregation, exacerbate blight and depress wealth accumulation.”¹⁶⁸ The City further concedes that minorities and people in poverty are located mainly in areas of the city that lack amenities such as grocery stores and schools, public and private sector services such as transportation and infrastructure like Trinity / Houston Gardens.¹⁶⁹

Despite these acknowledgments, the City of Houston continues to enforce inequality and discrimination by intentionally underinvesting in low-income neighborhoods such as the Gardens and overinvesting in those that are prosperous. City Programs such as TIRZ have allowed many affluent neighborhoods in Houston to successfully leverage tax dollars and private investment to attain higher levels of growth and prosperity, while less advantaged neighborhoods have continued to struggle with poor infrastructure and inadequate access to basic services.¹⁷⁰ In Houston, the Houston Galleria Area (TIRZ #1) ends up gilded in platinum with a \$192.5 million rapid bus transit system while other neighborhoods without a TIRZ like the Gardens end up lacking basic city services and economic investment. These trends should not continue as the resulting inequitable use of City resources is manifest.

As a further example of the consistent neglect of this community, METRO just revealed its proposed expansion plans through 2040 for its regional planning effort, which failed to increase significantly any new routes on the Northeast side despite the need for public transport and dedicated ridership. As shown in the mapped Vision Plan below, there is only one bus rapid transit line proposed, a single BOOST corridor planned, and a small emphasis on improving local service.

¹⁶⁸City of Houston, Housing and Community Development Department, *The Analysis of Impediments to Fair Housing Choice* (2015), available at <http://houstontx.gov/housing/AI%20Final%207.31.2015%20reduced%20size.pdf>

¹⁶⁹ *Id.*

¹⁷⁰<https://www.bakerinstitute.org/media/files/files/66f8b4b8/MTFE-Report-web-111717.pdf>

average of 6 months to be resolved in Houston/ Trinity Gardens while they are resolved in half that time in white neighborhoods. The statistics below tell the full picture of the City's lack of prioritization and outright neglect of this predominately minority community.

*Table 14: List of 311 Call Response Times for Super Neighborhood 48
Compared to Response Times in Whiter Neighborhoods*

Illegal Dumpsite calls to 311: Response More than Time Twice as Long in Trinity / Houston Gardens

Neighborhood	Average # of Days Open	Percent White	Percent Non-White
Trinity / Houston Gardens	28 days	1.75%	98%
Braeswood	15 days	60.5%	39.43%
University Place	17 days	68.03%	31.97%

Junk Vehicles calls to 311: Response Time More than Twice as Long in Trinity / Houston Gardens

Neighborhood	Average # of Days Open	Percent White	Percent Non-White
Trinity / Houston Gardens	7.5 days	1.75%	98%
Afton Oaks/River Oaks	2 days	77.4%	3.92%
Greater Uptown	1.7 days	66.6%	4.85%

Nuisance calls to 311: Response Time More than Twice as Long in Trinity / Houston Gardens

Neighborhood	Average # of Days Open	Percent White	Percent Non-White
Trinity / Houston Gardens	190.163 days	1.75%	98%
Greenway/Upper Kirby	91.18 days	69.46%	30.54%
Midtown	93.66 days	63.31%	36.69%

Missed Garbage Pickup calls to 311: Response Time Twice as Long in Trinity / Houston Gardens

Neighborhood	Average # of Days Open	Percent White	Percent Non-White
Trinity / Houston Gardens	6.4 days	1.75%	98%
Afton/River Oaks	3 days	77.4%	3.92%
Kingwood	3.5 days	78.86%	21.14%

Heavy Trash Violation calls to 311: Response Time Almost Twice as Long in the Gardens

Neighborhood	Average # of Days Open	Percent White	Percent Non-White
Trinity / Houston Gardens	57.618 days	1.75%	98%
Memorial	32.6 days	67.4%	32.52%
University Place	35.729 days	68.03%	31.97%

VI. RELIEF REQUESTED

Given these evidence and lasting disparities, complainant requests that HUD, DHS, DOC, and EPA accept this complaint concerning whether the City of Houston, Texas has violated Title VI of the

Civil Rights Act and its implementing regulations to the detriment of the residents of Super Neighborhood 48.

Complainant further requests that the City be brought into compliance by (a) reviewing these identified issues with City representatives; (b) identify specific steps that the City can take to reduce these historical and systemic inequities in the Super Neighborhood 48 neighborhood, and (c) conditioning all future grants and awards from HUD, DHS, DOC, and EPA to the City on adequate assurances that the actions of the City will strictly comply with Title VI and its related federal guidelines as detailed above.

Further, the City needs to provide specific mitigation measures targeted to Super Neighborhood 48's socially vulnerable populations through city policies and programs. Specific requests that the community has for such improvements include the following actions:

1. *Park Upgrades.* New signage, exercise station, bike racks, restrooms, re-contouring to improve drainage, additional entrance/exits, better amenities
2. *Increase City Services and Employees.* Dedication of more staff hours from the Houston Police Department (focused on shootings, prostitution and drag racing), Solid Waste Department officials, code enforcement, and BARC animal control to addressing the identified issues in SN48.
3. *Creation and Enforcement of ordinances/regulations/programs.* If it persists with "no zoning" as its default, the City needs to develop and implement truck yard, junk yard and illegal dumping enforcement programs to combat the high concentration of trash, hazardous materials and environmental issues in the Trinity / Houston Gardens Neighborhood.
4. *Infrastructure Improvements.* The City must prioritize sidewalk installation for accessibility and safety and culvert and ditch maintenance to mitigate man-made flooding issues in the SN48.
5. *Economic Development Initiatives.* The City needs to provide financial incentives for a first-time homebuyers' assistance program, senior assistance home repair program, and a small market or grocery store in SN48.

Any additional communications regarding this complaint filed on behalf of Super Neighborhood may be directed to Ex. (6), 7(C) LSLA's Equitable Development Initiative, at 713-652-0077 Ex. (6), 7(C) adinn@lonestarlegal.org.

Sincerely,

LONE STAR LEGAL AID
EQUITABLE DEVELOPMENT INITIATIVE
1415 Fannin
Houston, Texas 77002
Telephone: 713-652-0077 ext 8108
Facsimile: 713-652-3141

**ATTORNEYS FOR
SUPER NEIGHBORHOOD 48
TRINITY / HOUSTON GARDENS**

VIA FIRST CLASS MAIL

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cc: U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

Lone Star Legal Aid
Equitable Development Initiative
Environmental Justice Team
PO Box 398
Houston, Texas 77001-0398

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